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• By the Students • Of the Students • For the Students

ENVIORMENTAL LAW

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Environmental Law

Q. Why is the Human Environment and Development Conference at Stockholm of 1972, regarded as the 'Magna Carta' of environment and sustainable development? Discuss its main principles.

When the UN General Assembly decided to convene the 1972 Stockholm Conference, at the initiative of the Government of Sweden to host it, UN Secretary-General U Thant invited Maurice Strong to lead it as Secretary-General of the Conference, as the Canadian diplomat had initiated and already worked for over two years on the project.

Sweden first suggested to ECOSOC in 1968 the idea of having a UN conference to focus on human interactions with the environment. ECOSOC passed resolution 1346 supporting the idea. General Assembly Resolution 2398 in 1969 decided to convene a conference in 1972 and mandated a set of reports from the UN secretary-general suggesting that the conference focus on "stimulating and providing guidelines for action by national government and international organizations" facing environmental issues.

The meeting agreed upon a Declaration containing 26 principles concerning the environment and development; an Action Plan with 109 recommendations, and a Resolution. Principles of the Stockholm Declaration:

1. Human rights must be asserted, apartheid and colonialism condemned.
2. Natural resources must be safeguarded.
3. The Earth's capacity to produce renewable resources must be maintained.
4. Wildlife must be safeguarded.
5. Non-renewable resources must be shared and not exhausted.
6. Pollution must not exceed the environment's capacity to clean itself.
7. Damaging oceanic pollution must be prevented.
8. Development is needed to improve the environment.
9. Developing countries therefore need assistance.
10. Developing countries need reasonable prices for exports to carry out environmental management.
11. Environment policy must not hamper development.
12. Developing countries need money to develop environmental safeguards.
13. Integrated development planning is needed.
14. Rational planning should resolve conflicts between environment and development.
15. Human settlements must be planned to eliminate environmental problems.
16. Governments should plan their own appropriate population policies.
17. National institutions must plan development of states' natural resources.
18. Science and technology must be used to improve the environment.
19. Environmental education is essential.
20. Environmental research must be promoted, particularly in developing countries.
21. States may exploit their resources as they wish but must not endanger others.
22. Compensation is due to states thus endangered.
23. Each nation must establish its own standards.
24. There must be cooperation on international issues.
25. International organizations should help to improve the environment.
26. Weapons of mass destruction must be eliminated.

One of the seminal issues that emerged from the conference is the recognition for poverty alleviation for protecting the environment. The Indian Prime Minister Indira Gandhi in her seminal speech in the conference brought forward the connection between ecological management and poverty alleviation. It is to be noted that she was the only other speaker in the conference other than the hosting country prime minister.

Some argue that this conference, and more importantly the scientific conferences preceding it, had a real impact on the environmental policies of the European Community (that later became the European Union). For

example, in 1973, the EU created the Environmental and Consumer Protection Directorate, and composed the first Environmental Action Program. Such increased interest and research collaboration arguably paved the way for further understanding of global warming, which has led to such agreements as the Kyoto Protocol and also this has given a foundation of modern environmentalism.

Q. "Rio Declaration is the reaffirmation of Stockholm Declaration with the object to establish global partnership to protect human environment". - Explain.

The "Rio Declaration on Environment and Development" defines sustainable development in 27 principles. Using these principles in an effective combination provides an important guideline on the road to achieving a more sustainable world. In this sense the Rio Declaration is complementary to other approaches which clarify "sustainable development" (SD) and provides the ideal perspective. Among them are definitions, paradigmatic descriptions, guidelines, action frameworks and ethical interpretations of the concept.

This chapter lists the preamble and the 27 principles enshrined in the Rio Declaration. Each principle is discussed in terms of background, implementation and future perspectives. Particular attention is paid to the principles of intra- and inter-generational equity, the precautionary principle, the polluter and user pays principles.

The Rio Declaration also highlights the importance of the use of interdisciplinary, managerial instruments for environmental management, and in particular environmental impact assessment and environmental standards. The Declaration stresses the participation of citizens as an important ingredient of effective policy development and implementation. It attributes particular roles to women, children, the youth and indigenous people.

Although the Declaration of Rio is not the stronger "Earth Charter", it was originally intended to be, it is still an important landmark in our interpretation of sustainable development, worldwide. In this context it has therefore definitely contributed to the emergence of a pragmatic new environmentalism. Next to this, it is characterized by political compromising which explains its fragmentary appearance and the lack of a systematic and a clear philosophical line. Finally, it is also a milestone step in the process towards a more sustainable world.

<u>The Principles adopted in the declaration were:</u>

1. Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.
2. States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.
3. The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.
4. In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.
5. All States and all people shall cooperate in the essential task of eradicating poverty as an indispensable requirement for sustainable development, in order to decrease the disparities in standards of living and better meet the needs of the majority of the people of the world.
6. The special situation and needs of developing countries, particularly the least developed and those most environmentally vulnerable, shall be given special priority. International actions in the field of environment and development should also address the interests and needs of all countries.

7. States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.
8. To achieve sustainable development and a higher quality of life for all people, States should reduce and eliminate unsustainable patterns of production and consumption and promote appropriate demographic policies.
9. States should cooperate to strengthen endogenous capacity-building for sustainable development by improving scientific understanding through exchanges of scientific and technological knowledge, and by enhancing the development, adaptation, diffusion and transfer of technologies, including new and innovative technologies.
10. Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.
11. States shall enact effective environmental legislation. Environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply. Standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries.
12. States should cooperate to promote a supportive and open international economic system that would lead to economic growth and sustainable development in all countries, to better address the problems of environmental degradation. Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing transboundary or global environmental problems should, as far as possible, be based on an international consensus.
13. States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.
14. States should effectively cooperate to discourage or prevent the relocation and transfer to other States of any activities and substances that cause severe environmental degradation or are found to be harmful to human health.
15. In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.
16. National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.
17. Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.
18. States shall immediately notify other States of any natural disasters or other emergencies that are likely to produce sudden harmful effects on the environment of those States. Every effort shall be made by the international community to help States so afflicted.

19. States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse trans boundary environmental effect and shall consult with those States at an early stage and in good faith.
20. Women have a vital role in environmental management and development. Their full participation is therefore essential to achieve sustainable development.
21. The creativity, ideals and courage of the youth of the world should be mobilized to forge a global partnership in order to achieve sustainable development and ensure a better future for all.
22. Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.
23. The environment and natural resources of people under oppression, domination and occupation shall be protected.
24. Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.
25. Peace, development and environmental protection are interdependent and indivisible.
26. States shall resolve all their environmental disputes peacefully and by appropriate means in accordance with the Charter of the United Nations.
27. States and people shall cooperate in good faith and in a spirit of partnership in the fulfillment of the principles embodied in this Declaration and in the further development of international law in the field of sustainable development.

Q. Discuss the importance of the Kyoto Protocol and state its important provisions.

Environment protection is not territorial but a global concern and therefore, the effort to protect the environment is going on also at the international level as the environmental policy of any country does not only affects the environment of that country, rather it affects in whatever extent possible, the global environment. 'Kyoto Protocol' is the example of a measure undertaken at the international level under the aegis of the United Nations aimed at curbing the emission of Greenhouse gases (Carbon Dioxide, Methane, Nitrous Oxide, Sulphur Hexafluoride and two groups of gases hydro fluorocarbons & per fluorocarbons) by the industrialised countries, which adversely impacts the global environment.

'Kyoto Protocol' is the part of the United Nations Framework Convention on Climate Change (UNFCC). UNFCC sets an overall framework for inter-governmental efforts aimed at tackling the challenges of climate change. Climate Change refers to the fact that due to developmental human activities the original climate of the world is changing and the average temperature of world is rising every year and this will result in climate change which may have very serious consequences for present and future generations. The increase in temperature is primarily cause of the emission of greenhouse gases, which are emitted mainly from industries. This also adds to the depletion of the ozone layer which prevents the harmful effects of the sun from reaching the Earth. Therefore, this is a movement to protect the world inhabited by us from becoming a world unsuitable for human existence.

The 'Kyoto Protocol' sets binding obligations on industrialised countries to reduce emission of Greenhouse gases. The Protocol was adopted on 11 December 1997 in Kyoto, Japan and entered into force on 16 February 2005. More than 190 countries are the members of the Protocol, significantly though the United States of America is not the member of the Protocol. India is also a member of the Protocol.

Some of the principal concepts of the 'Kyoto Protocol' are:

- Under the Protocol 37 industrialised countries and European Union made up of 15 European countries (called Annexure 1 countries) have committed themselves to binding obligations to reduce emission of greenhouse gases.

- In order to meet the objectives of the Protocol, Annex I, Parties are required to prepare policies and measures for the reduction of greenhouse gases in their respective countries. In addition, they are required to increase the absorption of these gases.
- Accounting, Reporting and Review in order to ensure the implementation of the Protocol.
- Establishing a Compliance Committee to enforce compliance with the commitments under the Protocol.

'Kyoto Protocol' is a very important milestone as it is an acknowledgement of the fact that in the name of industrial development the environment cannot be harmed to such an extent that we render it unsuitable for a healthy human existence. Industrialised countries by accepting the binding obligation to reduce the emission of the greenhouse gases have accepted their collective responsibility in making the global environment cleaner and healthier and thereby realizing the goal for a sustainable development. This obviously is a work in progress but what is important is its realisation and the exhibition of a global will to address this menace.

Q. Discuss the object, reasons and background of enacting the Environment (Protection) Act, 1986.
The Environment (Protection) Act was enacted in the year 1986. It was enacted with the main objective to provide the protection and improvement of environment and for matters connected therewith. The Act is one of the most comprehensive legislations with pretext to protection and improvement of environment.

The Constitution of India also provides for the protection of the environment. Article 48A of the Constitution specifies that the State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51 A further provides that every citizen shall protect the environment.

Premises of the Act
It is now generally accepted that environment is threatened by a wide variety of human activities ranging from the instinctive drive to reproduce its kind to the restless urge of improving the standards of living, development of technological solutions to this end, the vast amount of waste, both natural and chemical, that these advances produce. Paradoxically, this urge to grow and develop, which was initially uncontrolled is now widely perceived to be threatening as it results in the depletion of both living and non-living natural resources and life support systems. The air, water, land, living creatures as well as the environment in general is becoming polluted at an alarming rate that needs to be controlled and curbed as soon as possible.

The 1986 Act was enacted in this spirit. From time to time various legislations have been enacted in India for this purpose. However, all legislations prior to the 1986 Act have been specific relating to precise aspects of environmental pollution. However, the 1986 Act was a general legislation enacted under Article 253 (Legislation for giving effect to international agreements.—Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body) of the Constitution, pursuant to the international obligations of India. India was a signatory to the Stockholm Conference of 1972 where the world community had resolved to protect and enhance the environment.

The United Nations conference on human environment, held in Stockholm in June 1972, proclaimed that "Man is both creator and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has reached when through the rapid acceleration of science and technology man has acquired the power to transform his environment in countless ways and on unprecedented scale. Both aspects of man's environment, the natural and manmade are essential to his well-being and to the enjoyment of basic human rights even the right to life itself".

While several legislations such as The Water (Prevention and Control of Pollution) Act, 1974 and The Air (Prevention and Control of Pollution) Act, 1981 were enacted after the Conference, the need for a general legislation had become increasingly evident. The EPA was enacted so as to overcome this deficiency.

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Objectives: As mentioned earlier, the main objective of the Act was to provide the protection and improvement of environment and for matters connected therewith. Other objectives of implementation of the EPA are:

- To implement the decisions made at the UN Conference on Human Environment held at Stockholm in June, 1972.
- To enact a general law on the areas of environmental protection which were left uncovered by existing laws. The existing laws were more specific in nature and concentrated on a more specific type of pollution and specific categories of hazardous substances rather than on general problems that chiefly caused major environmental hazards.
- To co-ordinate activities of the various regulatory agencies under the existing laws.
- To provide for the creation of an authority or authorities for environmental protection.
- To provide a deterrent punishment to those who endanger human environment, safety and health.

Q. Define the term 'Environment', 'environmental pollution' and 'Hazardous Substance' as defined in Environment Protection Act 1986.

Section 2 of the EPA deals with definitions. Some important definitions provided in the Section are:

Section 2 (a) "Environment" includes water, air, and land and the interrelationship that exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property. This definition is not exhaustive but an inclusive one.

Section 2 (b) "Environmental Pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment.

Section 2 (c) "Environmental Pollution" means the presence in the environment of any environmental pollutant. This implies the imbalance in environment. The materials or substances when after mixing in air, water or land alters their properties in such manner, that the very use of all or any of the air water and land by man and any other living organism becomes lethal and dangerous for health.

Section 2 (e) "Hazardous Substance" means any substance or preparation which, by reasons of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or environment.

Q. Discuss the power of the Central Government to take measures to protect and improve the environment as laid down under the Environment (Protection) Act, 1986.

According to the provisions of the Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution. Such measures may include measures with respect to all or any of the following matters, namely: a) co-ordination of actions by the State Governments, officers and other authorities- (a) under this Act, or the rules made thereunder, or (b) under any other law for the time being in force which is relatable to the objects of this Act;

1. Planning and execution of a nation-wide program for the prevention, control and abatement of environmental pollution;
2. Laying down standards for the quality of environment in its various aspects;
3. Laying down standards for emission or discharge of environmental pollutants from various sources whatsoever: Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

4. Restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;
5. Laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
6. Laying down procedures and safeguards for the handling of hazardous substances;
7. Examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;
8. Carrying out and sponsoring investigations and research relating to problems of environmental pollution;
9. Inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;
10. Establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;
11. Collection and dissemination of information in respect of matters relating to environmental pollution;
12. Preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;
13. Such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

The Central Government may, if it considers it necessary or expedient so to do for the purpose of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section (5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise and powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures.

As considerable adverse environment impact has been caused due to degradation of the environment with excessive soil erosion and water and air pollution due to certain development activities therefore it is necessary to protect the environment. This can be achieved only by careful assessment of a project proposed to be located in any area, on the basis of an environment impact assessment and environment management plan for the prevention, elimination or mitigation of the adverse impacts, right from the inception stage of the project.

The Central Government has passed certain notifications laying that the expansion or modernization of any existing industry or new projects listed shall not be undertaken in any part of India, unless it gets environmental clearance by the Central Government, or the State Government.

Powers of the Court

The Act does not curtail the powers of the Supreme Court. It has from time to time in various matters issued directions and orders to control pollution. Some such important cases pertaining to protection of environment are: Directions issued to control vehicular pollution

In ***Mehta v Union of India (1998) 6 SCC 63***, in order to control the chaotic traffic conditions and vehicular pollution, the Supreme Court issued the following directions:
(a) All commercial/transport vehicles which are more than 20 years old should be phased out and not permitted to ply in Delhi after October 1998.
(b) All such commercial /transport vehicles which are 17 to 19 years old (3200) shall not be permitted to ply in the National Capital Territory, Delhi after 1998;
(c) Such of the commercial /transport vehicles which are 15 and 16 years old (4962) shall not be permitted to ply after December 31, 1998.

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The Supreme Court made this order applicable to all commercial/transport vehicles whether registered in the National Capital Territory of Delhi or outside (but ply in Delhi) which are of more than stipulated age and which do not have any authority to ply in Delhi.

Protection of Coastline of India

In ***Indian Council for Enviro-Legal Action v Union of India***, the Supreme Court in regard to the 600 kms long coast line emphasized that that it would be the duty and responsibility of the coastal states and Union Territories in which the stretch exists, to see that the notifications issued, declaring the coastal stretches should be properly and duly implemented. Further the various restrictions on the setting up and expansion of industries, operation or process, etc. in the regulation Zone should be strictly enforced.

In the same case the court enunciated the principle further that the polluter pays. Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person irrespective of the fact whether he took reasonable care while carrying on his activity. Under this principle it is not the role of the Government to meet the costs involved in either prevention of such damage or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident on the taxpayer. The responsibility of repairing the damage is that of the offending industry.

Other cases

In ***Vellore Citizen Welfare Forum v. Union of India & others*** the polluter principle as interpreted by the Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.
Remediation of the damaged environment is part of the process of "Sustainable Development" and as such polluter is liable to pay the cost to the individual sufferer as well as the cost of reversing the damaged ecology.

In ***Goa Foundation v Diksha Holdings Pvt. Ltd*** the court observed that with a view to protect the ecological balance in the coastal areas, notifications having been issued by the Central Government, there ought not to be any violation and prohibited activities should not be allowed to come up within the area declared as CRZ notification. The court also emphasised that no activities which would ultimately lead to unscientific and unsustainable development and ecological destruction should be allowed.

Prevention, Control and Abetment of Environment Pollution

Chapter III of the EPA deals with prevention, Control and abetment of Environmental Pollution. Some important provisions of this chapter provide that, No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed. No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safe guards as may be prescribed. Where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which the discharge occurs shall be bound to prevent or mitigate the environmental pollution. and shall also:

(a) intimate the fact of such occurrence or apprehension of such occurrence; and
(b) be bound, if called upon, to render all assistance. On receipt of such information, the authorities or agencies shall cause such remedial measures to be taken as are necessary to prevent or mitigate the environmental pollution.

The expenses incurred by any authority or agency may be recovered from the person concerned as arrears of land revenue or of public demand.

Penalties

Section 15 provides for Penalties for contravention of the provisions of the Act as well as the Rules, Orders and Directions. Whoever fails to comply with or contravenes any of the provisions, rules, orders or directions of this Act shall be punishable with imprisonment for a term which may extend to five years or with ne which may extend to one lakh rupees, or with both. In case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues.

If the failure or contravention continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which, may extend to seven years.

Offences by Companies

Offences by Companies are dealt with under Section16. Where any offence is committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company shall be deemed to be guilty of the offence.

If he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence he shall not be liable to any punishment.

Where the offence has been committed with the consent or connivance of or is attributable to any neglect on part of, any director, manager, secretary or other officer of the company, such person shall be deemed to be guilty of the offence

Cognizance of Offences and Bar of Jurisdiction of Civil Courts

As per the provisions of Section 19 of the EPA, no court shall take cognizance of any offence under this Act except on a complaint made by:
(a) the central Government or any authority or officer authorized in this behalf by that Government; or
(b) any person who has given notice of not less than 60 days, of the alleged offence and his intention to make a complaint, to the Central Government or the authority or officer authorized.

Section 22 provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken or order or direction issued by the Central Government or any other authority or officer in pursuance of any power conferred under the Act.

The National Environment Appellate Authority

The National Environment Appellate Authority (NEAA) was set up as an independent body to address cases in which environmental clearances granted by the ministry of environment are challenged by civil society.

On January 30, 1997, the President of India, in exercise of the powers conferred under Article 123 - Power of President to promulgate Ordinances during recess of Parliament.— (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.) of the Constitution, promulgated an Ordinance to provide for the establishment of the NEAA to hear appeals with respect to restriction of areas in which any industries, operations and processes shall not be carried out or shall be carried out subject to the safeguards as provided under the EPA. The Ordinance was later on repealed with the enactment of the National Environment Appellate Authority Act, 1997.

The NEAA Act, which was granted presidential assent on 26th March, 1997 came into force from 9.4.97. This Act provides for the establishment of a NEAA. The Act was enacted with the following object:

To hear appeals with respect to restriction of areas in which any industry, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the EPA and for matters connected therewith or incidental thereto.

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This is to bring in transparency in the process, accountability and to ensure smooth and expeditions implementation of developmental schemes and projects. Jurisdiction of the Act.

Any aggrieved person may file an appeal within thirty days of passing of an order granting environmental clearance in the areas in which any industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the EPA. It is further provided that the Authority may entertain an appeal even after the expiry of the said term if a sufficient cause for delay in filing such an appeal exists. The Authority is required to dispose of the appeal within ninety days from the date of filing of the same. However, the Authority may, for reasons that are to be recorded in writing, dispose of the appeal within a further period of thirty days.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—
(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and
(b) may be withdrawn at any time by the President.
Explanation. - Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.
(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

Q. Trace the relationship between the 'Public Nuisance' and 'Environment Pollution.' Answer in the light of the various Court decisions.
Section 133 CrPC provides a speedy and summary remedy in case of urgency where damages to public interest or public health etc. are concerned. It runs as under:
"133. (1) Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a (a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or (b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community; or (c) that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or (d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighborhood or passing by, and that in consequence the removal, repair or support of such tree, is necessary; or (e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or (f) that any dangerous animal should be destroyed, confined or otherwise disposed of, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order-
(i) to remove such obstruction or nuisance; or
(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or
(iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or
(iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or
(v) to fence such tank, well or excavation; or
(vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order; or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time

and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.
(2) No order duly made by a Magistrate under this section shall be called in question in any civil court.

In all proceedings initiated under this section, the Magistrate should bear in mind that he is supposed to be acting purely in the interest of the public, and should be on this ground against any tendency to use this section as a substitute for litigating in the civil court in order to arrive at the settlement of a private dispute.

For invoking jurisdiction under Section 133(1) CrPC it is not necessary that there should always be danger or inconvenience to public at large but even if danger or inconvenience is about to be caused, it is actionable under Section 133(1) and 138 CrPC. But the Magistrate has to act purely in the interest of the public. Drastic powers are conferred by Section 133(1). Those powers should be sparingly used. Any order made under Section 136 without notice under Section 133(1) is bad, consequential order under Section 144 is also bad.

Conditions precedent for the application of Section 133 CrPC

In order to provide a sanction under Section 133 the Magistrate must be satisfied that-
1. It is a public nuisance i.e. the number of persons injuriously affected is so considerable that they may reasonably be regarded as the public or a portion of it.
2. It is not a private dispute between different members of the public for which the proper forum is the civil court.
3. It is a case of great emergency of imminent danger to the public interest.

Section 133 CrPC vis-a-vis other special laws

There are other special or local laws dealing with nuisance. But the Magistrate's power to act under Section 133 is not affected by them. Even the Water (Prevention and Control of Pollution) Act, 1974 has not taken away powers of the Sub-Divisional Magistrate under Section 133 CrPC. The Sub- Divisional Magistrate has power to close a factory causing pollution, when appreciation certificate from the Pollution Control Board is not produced. Section 24 of the Environment (Protection) Act, 1986 reads:
"24. (1) Subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.
(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act."

Therefore, using criminal law machinery is not a bar even as per the Environment (Protection) Act, 1986. In Lakshmi Cement case it was held that Section 133 CrPC does not automatically or impliedly get repealed after the commencement of the Air (Prevention and Control of Pollution) Act, 1981. So proceedings under Section 133 CrPC are not barred.

Order of proceedings under Section 133

(1) issue of conditional ex parte orders
(2) service of order
(3) person to obey or show cause
(4) in urgency, issue of temporary injunction
(5) enquiry and findings' recording
(6) examination by an expert
(7) dropping or continuing the proceedings
(8) enforcement

Case laws

To analyze the use of criminal sanctions for abatement of environmental nuisance it is essential to consider the various precedents in this regard. In ***Ajeet Mehta v. State of Rajasthan***, it was held that stocking of fodder on

a certain plot in a residential colony constitutes pollution of atmosphere and hence public nuisance. The order directing removal of this nuisance was held valid and the respondents were directed not to do any business of fodder on that plot.

In another case there were fodder tali in a residential colony to which fodder was brought daily during the night by trucks which were unloaded in the morning. This caused intolerable noise, emanating offensive smell and spreading dust-containing particles of fodder cut. It was held as public nuisance.

In ***Nagarjuna Paper Mills case*** it was observed by the A.P. High Court that the power relating to air and water pollution, the Water Act, 1974 has taken away the power of the Sub-Divisional Magistrate to pass an order to close a factory causing pollution. The above said view was also confirmed by the Supreme Court in Ratlam case where Their Lordships held that "when on disclosure of existence of a public nuisance from information and evidence, the Magistrate considers that such unlawful obstruction or nuisance should be removed from any public place which maybe lawfully used by the public, he is to order removal of such nuisance".

Limitations

But while passing an order under Section 133 the Magistrate should be very keen about the complaint and also should see the fulfilment of the required conditions as stipulated. Otherwise the order passed police officer or other information on taking such evidence (if any) as he thinks fit, considers- by such Magistrate can be held illegal as it was in ***Chabila Roy v. State*** where the Magistrate on receiving a complaint regarding the running of a "khatal" did not examine the petitioner and the local people about the physical discomfort or health hazard on account of the "khatal", passed an order. It was held that the order was illegal being in variance with express provisions of Section 133 CrPC.

Q. State the composition of the Central and State Pollution Control Board under The Water (Prevention and Control of Pollution) Act, 1974. Discuss few important functions of the Central and State Board for prevention and control of water pollution.

Composition of Central Pollution Control Board

According to **Section-3**, the Central Board shall consist of the following members:

(a) A full time Chairman (to be nominated by the Central Government) having knowledge or practical experience in matters related to environmental protection or having knowledge and experience in administration of institutions dealing with aforesaid matters.

(b) Not more than five officials nominated by the Central Government.

(c) Not more than five persons nominated by the Central Government from amongst the members of State Boards.

(d) Not more than three non-officials nominated by the government to represent interests of agriculture, fishery, agriculture-trade et

(e) Two persons nominated by the government to represent the companies or corporations owned by the Central Government.

(f) One full time Member-Secretary (to be appointed by the Central Govt.) having knowledge and experience of scientific engineering or management aspects of pollution control.

Constitution of State Boards: Under Section-4, of the State Pollution Control Board may be constituted having the same constitution as the Central Board.

(3) Constitution of Committees: A board may constitute as many committees as necessary. The members of a committee shall be paid such fees and allowances for attending to any other work of the Board.

(4) Constitution of Joint Boards: According to Section-14 of the Act, under agreement between two or more contiguous States, Joint Boards may be constituted for those states, by the Central or State Governments.

Terms and Service Conditions of the Members of the Board:

(a) Terms and service conditions of the Member Secretary and Chairman shall be as prescribed by the Government.
(b) Rest of the members shall hold office for a term of three years.
(c) A member shall be eligible for renomination.
(d) Central or State Government may remove a member of the Central or State Board at any time by giving him reasonable notice and opportunity.
(e) The Chairman may resign by addressing his resignation to the government and a member may resign by addressing his resignation to the Chairman.
(f) In the case of insolvency, unsound mind, conviction for the offence under this Act, conviction for the offence involving moral turpitude, inability to attend three consecutive meetings, abusing position as member of the Board, Partnership with anybody dealing with sewage or trade effluent etc., are some conditions for disqualification of the member. Seat of the disqualified member shall fall vacant and a person nominated to fill such a vacancy shall hold office for the remaining term.

Meetings of the Boards: According to Section-8, at least one meeting must be held in every three months.

Functions of the Central Board: According to Section 16-A, the following are the functions of the Central Board:
(a) To promote cleanliness of streams and wells in different areas of the state.
(b) To advise the Central Govt, on matters concerning the prevention and control of water pollution.
(c) To co-ordinate the actions of the State Board and resolve disputes among them.
(d) To provide technical assistance and guidance to the State Boards to carry out research in prevention and control of water pollution problems.
(e) To organise training of persons engaged in pollution control.
(f) To organise comprehensive program for pollution control through mass media.
(g) To lay down standards for streams or wells.
(h) To prepare manuals, codes or guides for treatment and disposal of sewage and trade effluents.
(i) To establish or recognise laboratories for analysis of water samples from any stream, well or trade effluents.

Functions of the State Boards: Under Section 7-B, the following are the functions of a State Board:
(a) Planning a comprehensive program for prevention, control and abatement of pollution of streams and wells.
(b) Advising the State Government regarding water pollution control or location of industries.
(c) Conducting and encouraging investigations and research relating to different aspects of water pollution.
(d) To collaborate with the Central Board for training personnel for handling water pollution programmes and organising related mass education programmes.
(e) Inspecting trade effluents and waste water treatment plants.
(f) Prescribing effluent standards for the sewage and trade effluents.
(g) Evolving economical and reliable methods of disposal, treatment and reuse of waste water (in agriculture).
(h) Laying down the standards of treatment of sewage and trade effluents to be discharged into any stream.
(i) Making, varying or revoking any order for preservation or control of discharge of waste into streams and wells or construction of systems for disposal of effluents.
(j) Establishing or recognising laboratories for analysis of samples.
(k) Performing such functions as may be entrusted by Central Board or State governments.

Directions
The Central Board shall be bound by directions given by the Central Govt, whereas the State Board shall be bound by directions given by the Central Board or the State Government.
In case a grave emergency arises as a result of non-compliance of the State Govt, as regards directions given by the Central Board, then the Central Govt, may recover the expenses incurred by it from the persons concerned, as arrears of land revenue.

Powers of the State Government

(A) Power to Obtain Information: According to Section 20.2, the State Board may make surveys, take measurements or obtain information for purpose of performing functions under this Act. Failure to comply with any directions under the Section is a punishable offence under subsection (1) of Section 41.

(B) Power to Take Samples: Under Section 21(1) A, the State Government has the power to take samples of water of any stream or well or any effluent being discharged into such a stream or well, for analysis. Under Section 22.4, the State Board further has the power to obtain a report of the result of the analysis by a recognised laboratory.

(C) Power of Entry and Inspection: According to Section 23.5, the State Board is empowered by the State Govt., with the right to enter any place for the purpose of performing any of the functions entrusted to it.

(D) Power of Prohibition on Disposal of Polluting Matter into a Stream or Well: Under Section 24.6,
(a) No person shall knowingly allow entry of any poisonous, noxious or polluting matter directly or indirectly into any stream, well or sewer or on land.
(b) No person shall knowingly allow entry of any matter into any stream, which may impede the proper flow of water resulting in substantial aggravation of pollution.
(a) No person shall establish any industry, operation or process or any treatment disposal system, which is likely to discharge any sewage or effluent into stream or well or on land.
(b) No person shall use any new outlet for discharge of sewage.
(c) No person shall begin to make any new discharge of sewage.

Consent of State Board
(a) Board must decide an application for consent within four months failing which consent will be deemed to have been given.
(b) Persons already discharging any sewage or effluent into any stream or well or on land will have to seek the consent of the State Board.
A person may appeal against the order of the State Board within 30 days, to an appellate authority established by the State Government. The State Govt, can alter the decision of the State Board, if necessary.
(c) While giving consent, if any work is required to be executed and the applicant fails to do so, the Board may itself execute it and recover the expenses along with interest.
(d) The State Board must be informed in case due to an accident in any industry or treatment or disposal system, any polluting matter is likely to be discharged into any stream, well or on land which in turn may pollute water. The Board may take remedial measures wherever necessary.
(e) The Board may approach a court for restraining a person who is likely to cause pollution by disposal discharge of polluting matter into a stream, well or on land.
The person concerned may be directed by the court to remove the polluting matter and in case of non-compliance, the court may authorise the board to do the needful and the expenses incurred by the Board may be recovered from the person concerned.
The Board may order closure, prohibition or regulation of any industry or operation. It may stop or regulate the supply of electricity, water or any other service.

Penalties for Violation of the Provisions of the Act
(a) In case of failure to give information by a person discharging effluents into stream or well or regarding construction or establishment of a disposal system the penalty is imprisonment up to 3 months or fine up to Rs. 10,000/- or both.
If the omission continues, the penalty is an additional fine up to Rs. 5000/- per day.
(b) In case of destroying or damaging the property of the Board, obstructing the performance of the Board's functions, failure to furnish information about accidents under section 31, giving wrong information or making false statements to get Board's consent, the penalty is, imprisonment up to 3 months or fine up to Rs. 10,000/- or both.
(c) In case of violation of order prohibiting discharge of any polluting matter into stream, well or land, or violation of control order restraining pollution of water or streams or wells or violation of Board order of closure

of industry or stoppage of water or electricity supply etc., the penalty is imprisonment for one and a half years to six years and fine. If it continues there is an additional fine of Rs. 5000/- per day and if it continues beyond one year then the penalty is imprisonment of two to seven years on conviction.
(d) In case of permitting polluting material into any stream, well or land the penalty is imprisonment for one and a half years to six years or fine or both.
On subsequent conviction the offender is penalised to imprisonment for two to seven years and fine, and the names of the offenders are published in newspapers at offender's expense.

Cognizance of an offence shall be taken by a court on a complaint by
(1) A Board or an officer authorised by the Board
(2) Any person intending to make a complaint and who has given at least 60 days' notice of the offence.

Q. Discuss the power of the State Pollution Control Board to take samples of any sewage or trade effluent for the purpose of its analysis and the procedure to be followed in connection therewith as laid down under the Water (Prevention and Control of Pollution) Act, 1974. How is the report of the result of analysis of such sample prepared by the analyst?
A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or over any place into any such stream or well. [Section 21 (1)]

The result of any analysis of a sample of any sewage or trade effluent taken under Sub-section (1) shall not be admissible in evidence in any legal proceeding unless the following requirements are complied with:
(1) When a sample of any sewage or trade effluent is taken for analysis the person taking the sample shall:
(a) serve on the person in charge of or having control over the plant or vessel or in occupation of the place or any agent of such occupier, a notice then or there in such form as may be prescribed on his intimation to have it so analyzed;
(b) in the presence of the occupier or his agent divide the sample into two parts;
(c) cause each part to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;
(d) send one container forthwith –
i) in a case where such sample is taken from any area situated in a union territory, to the laboratory established or recognized by the Central Board under Section 16; and
ii) in any other case, to the laboratory established or recognized by the State Board under Section 17;
(e) on the request of the occupier or his agent, send the second container;
i) in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or specified by the Central Government.
ii) in any other case, to the laboratory established or specified by the State Government.
(2) When a sample of any sewage or trade effluent is taken for analysis and the person taking the sample serves on the occupier or his agent willfully absents him, then;
(a) the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory and he shall inform, the Government analysis in writing about the willful absence of the occupier or his agent;
(b) the cost incurred in getting such sample analyzed shall be payable by the occupier or his agent and in case of default in such payment, the same shall be recoverable from the occupier or his agent, as this case may be, as an arrear of land revenue or of public demand. But no such recovery shall be made unless the occupier, or as the case may be his agent has been given a reasonable opportunity of being in the matter. [Section 21(4)]
(3) When a sample of any sewage or trade effluent is taken for analysis and the person taking the sample serves on the occupier or his agent notice and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into parts as provided in the section then the sample be

marked and sealed and shall be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory for analysis. [Section 21(5)]

The procedure prescribed under Section 21 of the Act is mandatory. The result of the analysis of samples will be admissible in legal proceedings provided the safeguards and the procedures prescribed under the statute are compiled with.

In ***Delhi Bottling Company Private Limited v. Central Board for the Prevention and Control of Pollution, 45 A.I.R. 1986 Del. 152.*** the Board took a sample of the trade effluents from a bottling company's discharge stream. The Board got the trade effluent analyzed and found that it did not conform to the requirements of the consent order granted to the company. The Board filed a suit under Section 33 of the Act and accordingly the Court issued an injunction requiring the company to establish a treatment plant. The order of the Court was challenged on the ground that the representative of the company present at the time of taking sample by the Board, had requested that the sample be analyzed by the Delhi Administration laboratory as provided in Section 21 of the Water Act and as such it was not admissible in evidence. Thus, the court decided the case in favour of the company because the Board could not prove that the company was violating its consent orders.

It is commented on a literal interpretation, the ruling was correct, one has to note that the company did not challenge the results of the analysis itself, integrity of the sample, or 'the method of' analysis. It was also pointed out that the requirement of notice before the sample was taken, gives the polluters an immediate opportunity to temporarily reduce or cease discharge or pollutants when the sample was taken.

In ***Abdul Hamid v. Gwalior Rayon Company, (1989) Cr. L.J. 2013***, the Madhya Pradesh High Court pointed out that the Section 21 of the Water Act was meant for the protection of the industries and industrialists ensuring a proper balance between the conflicting claims of the nation's industrial progress and the hazards to the citizens and it seeks to implement the provision of Section 21 of the Water Act.

4. Reports of the Result of analysis taken under Section 21: Where a sample of any sewage or trade effluent has been sent for analysis to the laboratory established or recognized by the Central Board or State Board, the concerned Board shall analyse the sample and submit a report in the prescribed form of the result of such analysis in triplicate to the Central Board or the State Board as the case may be. [Section 22(2)]

On receipt of the report, one copy of the report shall be sent by the Central Board or the State Board as the case may be, to the occupier or his agent, another copy shall be preserved for production before the Court, in case any legal proceedings are taken against him and another copy shall be kept by the concerned Board. [Section 22(3)]

If there is any inconsistency or discrepancy between, or variation in the results of, the analysis carried out by the laboratory established or recognized by the Central Board or State Board, as the case may be, and that of the laboratory established or specified under Section 51 or Section 52, the report of the latter shall prevail. [Section 22(4)]

Any cost incurred in getting any sample analyzed at the request of the occupier or his agent shall be payable by such occupier or his agent and in case or default the same shall be recoverable from him as arrears of land revenue or of public demand. [Section 22(5)]

5. Power of Entry and Inspection: In order to ensure that the provisions of the Water Act are complied with Section 23 of the Water Act confers the power of entry and inspection on the State Boards. This Section provides that any person empowered by the State Board in this behalf shall have a right at any time to enter, with such assistance as he may consider, necessary any place for the following purposes:

a) for performing any of the function of the State Board entrusted to him;

b) for determining whether and if so in what manner, any such functions are to be performed or whether provisions of this Act or rules made thereunder, or any notice, order, direction or authorization, served, made, given or granted under this Act is being or has been complied with;
c) for examining any plant, record, register, document or any other material objects;
d) for conducting search of place in which he has reasons to believe that ah offence under this Act or the rules made thereunder has been or is being or is about to be committed; and
e) for seizing any such plant, record, register, document or other material object, if he has reasons to believe that it may furnish any evidence for commission of offence punishable under this Act for the rules made thereunder.

However, the right to enter under this Sub-section 23(1) of Water Act, for the inspection of a well shall be exercised only at reasonable hours, in a case where such well is situated in any premises used for residential purposes and the water thereof is used for domestic purpose.

Q. Define the term 'Air Pollution' as laid down under the Air (Prevention and Control of Pollution) Act, 1981.

Sections 2 of the Air Act deals with the definitions, the important ones are as follows:

1. Air Pollutant: Section 2(a) Air Pollutant means any solid, liquid and gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

2. Air Pollution: Section 2(b) Air Pollution means the presence in the atmosphere of any air pollutant.

3. Emission: Section 2(j) Emission means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet.

4. Occupier: Section 2(m) Occupier in relation to any factory or premises means the person who has control over the affairs of the factory or the premises and includes in relation to any substance the person in possession of the substance.

Q. Discuss the powers and Functions of Central and State Board under Air Act, 1981.

Constitution of the Air Pollution Control Board

Section 5 of the Air Act gives the constitution of the State Air Pollution Control Board. In any State in which the Water Act , 1974 is not in force or that Act is in force but the State Government has not constituted a State Board under Water Act, the State Government shall with effect from such date as it may be, by notification in Official Gazette, appoint, constitute a State Board for the prevention and control of air pollution under such name as may be specified in the Notification, to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

A State Board under this Act shall consist of the following members namely:

a. A Chairman, having a special knowledge or practical experience in respect of matters relating to environmental protection, to be nominated by State Government. He may be whole time or part time as the State Government may think fit.

b. Such number of Officials, not exceeding five as the State Government may think fit, to be nominated by the State Government to represent that Government.

c. Such number of persons, not exceeding five as the State Government may think fit, to be nominated by the State Government from amongst the members of the local authorities functioning within the State.

d. Such number of persons, not exceeding three as the State Government may think fit, to be nominated by the State Government to represent interest of agriculture, fishery or industry or trade or labour or any other interest which in the opinion of that Government ought to be represented.

e. Two persons to represent the Companies or Corporations owned, controlled or managed by State Government to be nominated by that Government.

f. A full time Member Secretary having practical experience in respect of matters relating to environmental protection and having administrative experience, to be appointed by the State Government.

State Government shall ensure that not less than two of the members are persons having special knowledge or practical experience in respect of matters relating to the improvement of the quality of air or the prevention, control or abatement of air pollution.

Powers

1. No person shall without the previous consent of the State Board, establish or operate any industrial plant in an Air Pollution Control Area.
2. State Board may make inquiry in respect of application for consent referred above.
3. State Board may grant or refuse the application referred above.
4. State Board shall have right to enter, at all reasonable times with such assistance as it considers necessary to any place.
5. State Board is empowered to call for any information from the occupier or any person carrying on any industry or operating any control equipment or industrial plant.
6. State Board shall have right to inspect the premises where industry, control equipment or industrial plant is being carried on or operated.
7. State Board has right to take, for the purposes of analysis, samples of air or emission from any chimney, flue or duct or any other outlet.

Functions

a. To plan a comprehensive program for the prevention, control or abatement of air pollution and to secure the execution thereof.
b. To advise the State Government on any matter concerning the prevention, control or abatement of air pollution.
c. To collect and disseminate information relating to air pollution.
d. To collaborate with Central Board in organizing the training of persons engaged or to be engaged in programs relating to prevention, control or abatement of air pollution and to organize mass education program relating thereto.
e. To inspect, at all reasonable times, any control equipment, industrial plant or manufacturing and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution.
f. To inspect Air Pollution Control Areas at such intervals as it may think necessary, access the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas.
g. To lay down, in consultation with the Central Board and having regard to the standards of the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft.
Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere form such industrial plants.
h. To advise State Government with respect to the suitability of any premises or location for carrying on any industry this is likely to cause air pollution.
i. To perform such other functions as may be prescribed or as may from time to time be entrusted to it by the Central Board or the State Government.
j. To do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of the Act. A State Board may establish or recognize laboratories to enable the State Board to perform its functions under this Section efficiently.

Critical Analysis: As far as composition of the Board is concerned it is clear that an adequate representation of interests was not adhered to. In India the Environment Legislation regime is essentially backed up with a movement through the PIL regime as well as direct participation of people representation in the composition of the Board. This may in one way partly affect the very effective functioning of the Board. When we look into some provisions which provide specific powers to the Board such as taking up sample and examination of

emission standards are confined only to the Air Pollution Control Areas. This aspect may create a conflict at the time of enforcement of the provisions followed by the penal sanctions.

Q. Discuss the power of State Government to declare 'Air Pollution Control Areas' and give instructions for ensuring Standards for emission from automobiles.

As per section 19 of the Act, the State Government may declare any area or areas within the State as air pollution control area or areas. Such area or areas may be altered by way of extension or reduction by the State Government. Similarly, a new air pollution control area may be declared in which existing air pollution control areas or any part or parts thereof may be merged. The State Government may prohibit the use of any fuel, other than an approved fuel, in any air pollution control area or part thereof, if it is likely to cause air pollution. The State Government may direct that no appliance, other than an approved appliance, shall be used in the premises situated in an air pollution control area. Moreover, if the State Government is of the opinion that the burning of any material (not being fuel) in any air pollution control area or part thereof may cause or is likely to cause air pollution, it may prohibit the burning of such material in such area or part thereof.

The aforesaid measures may be taken by the State Government by notifications in the official Gazette after consultation with the State Board.

Powers to give Instructions for ensuring Standards for Emission from Automobiles: Under section-20, the State Government in consultation with the State Board shall, with a view to ensuring compliance to standards prescribed by it with respect to emissions from automobiles, give such instructions as may be deemed necessary to the concerned authority in charge of registration of motor vehicles under the Motor Vehicles Act, 1939 (Act 4 of 1939), and such authority shall be bound to comply with such instructions.

Restriction on use of Certain Industrial Plant: Section-21 makes a provision of Consent of the State Pollution Control Board for establishing or operating any industrial plant in an air pollution control area. It also lays down procedures for making the application which has to be in the prescribed form and accompanied by such fees as may be prescribed, the manner of inquiry and a time limit of four months within which the consent has either to be granted or refused by the State Board. The consent so granted may be cancelled or refused before the expiry of the period of consent if the conditions are not complied with.

Compliance to prescribed standards: Under Section-22 no person having any industrial plant in an air pollution control area can discharge emissions of any air pollutants in the excess of the standards prescribed by the State Pollution Control Boards.

Power of Board to make an application to Court for restraining persons from causing Air Pollution: Under section-22A, where a violation of the emission standards prescribed by the Board is apprehended the Board may make an application to a court, for restraining such person from emitting such pollutant. The court may issue necessary directions. In case the same are not complied with, by the person, the court may authorize the Board to implement the directions. Costs so incurred by the Board can be recovered as arrears of land revenue.

Power of Entry and Inspection: Under Section-24, any person authorized by a State Board has a right to enter any place with the objective of performing his duties under the Air (Prevention and Control of Pollution) Act as entrusted to him and shall be provided all assistance by the person operating the plant.

Power to obtain Information: Under Section-25, the State Board or any officer empowered by the Board has a right to seek information from the occupier or any other person operating the plant (regarding functions as entrusted to the officer in this behalf). He will also have a right to inspect the premises in order to verify the correctness of the information.

Power to take Samples of Air or Emission and Procedures: Section-26 empowers the State Board or any officer in this behalf to take samples of air or emission from any chimney, flue or duct or any other outlet. It also

prescribes the procedure for giving notice, dividing samples into two parts, sending one part to the Board and the other part to the State air laboratory constituted by the state government under section 28 for analysis.

Appeals: Under Section-31, any person aggrieved by an order made by the State Board under this act may prefer an appeal before the appellate authority constituted by the state government for the purpose. The appeal has to be generally filed within thirty days from the date on which the order is communicated but the appellate authority may entertain the appeal after the expiry of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Power to Give Directions: **Section-31A** empowers the State Pollution Control Boards in the exercise of their powers and performance of functions under this Act to issue any direction in writing to any person, officer or authority. It has also been provided that such person, officer or authority shall be bound to comply with the directions. The power to issue directions under this section includes the power to direct for the closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply of electricity, water or any other services.

Q. Write a brief note on the Wildlife (Protection) Act, I972.

The Wildlife Protection Act, 1972, provides for protection to listed species of flora and fauna and establishes a network of ecologically-important protected areas. The Act consists of 60 Sections and VI Schedules- divided into Eight Chapters. The Wildlife Protection Act, 1972 empowers the central and state governments to declare any area a wildlife sanctuary, national park or closed area. There is a blanket ban on carrying out any industrial activity inside these protected areas. It provides for authorities to administer and implement the Act; regulate the hunting of wild animals; protect specified plants, sanctuaries, national parks and closed areas; restrict trade or commerce in wild animals or animal articles; and miscellaneous matters. The Act prohibits hunting of animals except with permission of authorized officer when an animal has become dangerous to human life or property or as disabled or diseased as to be beyond recovery.

The Act underwent many amendments. An amendment to the Act in 1982, introduced provisions permitting the capture and transportation of wild animals for the scientific management of animal population. An amendment in the year 1991 resulted in the insertion of the special chapters dealing with the protection of specified plants and the regulation of zoos. This also recognized the needs of tribal and forest dwellers and changes were introduced to advance their welfare. The near-total prohibition on hunting was made more effective by the Amendment Act of 1991.

Widespread changes have been made by the Wildlife (Protection) Amendment Act, 2002 and a new chapter has been incorporated as Chapter VI-A to deal with the forfeiture of property derived from illegal hunting and trade. Further, this amendment Act also introduced the concept of co-operative management through conservation reserve management committee and community reserve committees. With this introduction now let us discuss the Wildlife (Protection) Act, 1972 in a detailed way.

Territorial Jurisdiction of Wildlife (Protection) Act, 1972: Wildlife (Protection) Act, 1972 has been accepted and adopted by all the states except Jammu and Kashmir. This is the first comprehensive legislation relating to protection of wild life was passed by the Parliament and it was assented by the President on 9th September, 1972 and came to be known as The Wild Life (Protection) Act, 1972 (53 of 1972).

Definition of Wildlife: The Section 2(37) of the Act defines wildlife as wildlife includes any animal, bees butterflies, crustacean, fish and moths; and aquatic or land vegetation which forms part of any habitat. So, the meaning of the wildlife in this Act is very wide and inclusive of all kinds of flora and fauna.

Authorities Constituted Under Wildlife (Protection) Act: As per the Sec. 3 of the Act, the Central Government may appoint a Director of Wildlife Preservation, Assistant Directors of Wildlife Preservation and such other officers and employees as may be necessary. As per the Sec. 4, the State Government may, for the purpose of

this Act, appoint Chief Wildlife Warden, Wildlife Warden, Honorary Wildlife Wardens and other officers and employees as may be necessary. As per Sec. 6, the State Governments and the Administrators in Union Territories shall constitute a Wildlife Advisory Board.

The Wildlife Advisory Board (Sec. 6): The Sec. 6 of this Act enforces and enables the state governments and the administrators of the Union Territories to constitute a Wildlife Advisory Board in each states and union territories. In ***WWF v. Union of India***, Supreme Court directed the states which didn't constitute the Wildlife Advisory Board, to constitute within 2 months.

The members of the Wildlife Advisory Board: It shall consist of the Minister in charge of Forests in the State or Union territory as the Chairman. If there is no such minister, then the Chief Secretary will be the Chairman of the Board. The other members are, two members of the State Legislature or Legislature of Union Territory; Secretary to the state government or the government of the union territory, in charge of forests; the Forest officer in charge of the State Forest Department; an officer nominated by the Director of Wildlife Preservation; Chief wildlife warden; officers of the state government not exceeding 5; and such other persons, not exceeding 10, who in the opinion of the state government, are interested in the protection of wildlife, including the representatives of tribal not exceeding.

Duties of Wildlife Advisory Board (Sec. 8): The Wildlife Advisory Board mainly constituted to advise the state government in the following matters.
a) In the selection of areas to be declared as Sanctuaries, National Parks and Closed areas and the administration thereof;
b) In formulation of the policy for protection and conservation of wildlife and specified plants;
c) In any matter relating to the amendment of any schedule;
d) In relation to the measure to be taken for harmonizing the needs of the tribals and other dwellers of the forests with the protection and conservation of wildlife;
e) In any other matter connected with the protection of wildlife which may be referred to it by the state government.

Hunting of Wild Animals (Sec. 9): Sec. 2(16(a) (b) (c)) defines the word hunting as follows Hunting, with its grammatical variations and cognate expressions, includes; capturing, killing, poisoning, snaring, and trapping or any wild animal and every attempt to do so; driving any wild animal for any of purposes specified in sub clause; injuring or destroying or taking any part of the body of any such animal, or in the case of wild birds or reptiles, damaging the eggs of such birds or reptiles, or disturbing the eggs or nests of such birds or reptiles;

Sec. 9 of the Act prohibits hunting of any wild animal specified in Schedules 1, 2, 3, and 4. Any person who hunts any wild animal shall be punishable with imprisonment for a term which may extend to 3 years or with fine which may extend to Rs. 25000/- or with both. However, if any person commits the offence in the sanctuary or national park, with respect any animal specified in Schedule 1, he shall be punishable with imprisonment which shall not be less than 1 year but may extend to 6 years and also with fine which shall not be less than 5000/-.

Hunting of Wild animals to be permitted in certain cases: The Chief Wildlife Warden may permit hunting of wild animals in certain situations. They are;
(a) The Chief Wildlife Warden may, if he is satisfied that any wild animal specified in Schedule 1 has become dangerous to human life or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefore, permit any person to hunt such animal or cause animal to be hunted;
(b) The Chief Wildlife Warden or the authorized officer may, if he is satisfied that any wild animal specified in Schedule. II or III or IV has become dangerous to human life or to property (including standing crops on any land) or is so disabled or diseased as to be beyond recovery, by order in writing and stating the reasons therefore, permit any person to hunt such animal or cause such animal to be hunted.
(c) The killing or wounding in good faith of any wild animal in defense of oneself or of any other person shall not be an offence; Provided that nothing in this sub-section shall exonerate any person who, when such

defense becomes necessary, was committing any act in contravention of any provision of this Act or any rule or order made there under.
(d) Any wild animal killed or wounded in defense of any person shall be Government property.

Grant of permission for hunting for special purposes: The Chief Wildlife Warden, permit, by an order in writing stating the reasons therefore, to any person, on payment of such fee as may be prescribed, which shall entitle the holder of such permit to hunt, subject to such conditions as may be specified therein, any wild animal specified in such permit, for the purpose of, (a) *Education*; (b) *Scientific research*; (c) *Scientific management*; means and includes (i) translocation of any wild animal to an alternative suitable habitat; or (ii) population management of wildlife, without killing or poisoning or destroying any wild animals. (d) *Collection of specimens* (i) for recognised zoos subject to the permission under section 38-1 or (ii) for museums and similar institutions; (e) *derivation, collection or preparation of snake-venom for the manufacture of life saving drugs*.

Protection of Specified plants: Sec. 17A of the Act prohibits picking, uprooting, etc., of specified plants. as otherwise provided in this Chapter, no person shall:
(a) willfully pick, uproot, damage destroy, acquire or collect any specified plant from any forestland and area specified, by notification, by the Central Government,
(b) possess, sell, other for sale, or transfer by way of gift or otherwise, or transport any specified plant, whether alive or dead, or part or derivative thereof.
Provided that nothing in this section shall prevent a member of a scheduled tribe, subject to the provisions of Chapter IV, from picking, collecting or possessing in the district he resides any specified plant or part or derivative thereof for his bonafide personal use.

The Chief Wild Life Warden may with the previous permission of the State Government, grant to any person a permit to pick, uproot, acquire or collect from a forest land or the area specified under section 17A or transport, subject to such conditions as may be specified therein, any specified plant for the purpose of education; scientific research., collection, preservation and display in a herbarium of any scientific institutions; or propagation by a person or an institution approved by the Central Government in this regard.

Sanctuaries: Section 18 provides that the State Government may, by notification, declare its intention to constitute any area other than area comprised with any reserve forest or the territorial waters as a sanctuary if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance, for the purpose of protecting, propagating or developing wildlife or its environment. For the purposes of this section, it shall be sufficient to describe the area by roads, rivers, ridges, or other well-known or readily intelligible boundaries.

The Chief Wildlife Warden may, on an application, grant to any person a permit to enter or reside in a sanctuary for the following purposes;
a) Investigation or study of wildlife and any purpose ancillary or incidental thereto;
b) Photography
c) Scientific research
d) Tourism
e) Transaction of lawful business with any person in the sanctuary.

Only a public servant on duty or permit holder or a person having a right over immovable property within the limits of a sanctuary, person passing through pathway in the sanctuary and dependents of the above can also enter and reside in the Sanctuary.

In ***Gujarat Navodaya Mandal V. State, the Gujarat*** High Court observed that there is nothing illegal in giving permission to lay down pipeline in and through the Marine National Park/ Sanctuary, Jamnagar. Because all the possible measures are taken to protect the ecology and environment. An more over there were conditions on permission to proper management as well as for the improvement of wildlife.

National Park: The state government, for the purpose of protecting, propagating or developing wildlife may by a notification declare that an area, by reason of its ecological, faunal, floral, geomorphological or zoological association or importance, needed to be constituted as a National Park. Once a National Park is declared, no alteration of the boundaries shall be made except on the resolution passed by the legislature of the state. In a National Park, the following activities are strictly prohibited;
a) Destroying, exploring or removing any wildlife,
b) Destroying, damaging the habitat of any wild animal,
c) Deprive any wild animal of its habitat,
d) Grazing of any livestock

In ***Animal and Environment Legal Defence Fund V. Union of India***, which was a writ petition came to Supreme Court, the petitioners filed the petition challenging the validity of granting permits for fishing to 305 tribal families in reservoirs within the Pench National Park (Madya Pradesh). But the Supreme Court adopted humanitarian approach keeping in mind the economic sustainability and environment protection. The Supreme Court directed the forest authorities and wildlife authorities to take adequate measures to protect the environment and at the same time keep watch on the villagers. The villagers were also directed not to enter other areas other than the reservoir.

Central Zoo Authority and Recognition of Zoos: The central government shall constitute the Central Zoo Authority, consisting of a chair person, team members and a member secretary. They shall hold office for a period of three years. The Central Zoo Authority shall perform the following functions:
(a) Specify the minimum standards for housing, upkeep and veterinary care of the animals kept in a zoo;
(b) Evaluate and assess the functioning of zoos with respect to the standards or the norms as may be prescribed;
(c) Recognize or derecognize zoos;
(d) Identify endangered species of wild animals for purposes of captive breeding and assigning responsibility in this regard to a zoo;
(e) Co-ordinate the acquisition, exchange and loaning of animals for breeding purposes;
(f) Ensure maintenance of stud-books of endangered species of wild animals bred in captivity;
(g) Identify priorities and themes with regard to display of captive animals in a zoo;
(h) Co-ordinate training of zoo personnel in India and outside India;
(i) Co-ordinate research in captive breeding and educational programs for the purposes of zoos;
(j) Provide technical and other assistance to zoos for their proper management and development on scientific lines;
(k) Perform such other functions as may be necessary to carry out the purposes of this Act with regard to zoos.

Trade or commerce in wild animals, animal articles and trophies: The term trophy means the whole or any part of any captive animal or wild animal, other than vermin, which has been kept or preserved by any means, whether artificial or natural, and includes, rugs, skins, and specimens of such animals mounted in whole or in part through a process of taxidermy, and antler, horn, rhinoceros horn, feather, nail, tooth, musk, eggs, and nests. And uncured trophy means the whole or any part of any captive animal, other than vermin, which has not undergone a process of taxidermy, and includes a [freshly killed wild animal ambergris, musk and other animal products];

Sec. 39 of the Act, declares that every wild animal other than vermin, which is hunted or kept or bred in captivity or found dead or killed by mistake, shall be the property of the State Government. Likewise, animal articles, trophy or uncured trophy, meat derived from any wild animal, ivory imported to India, article made from such ivory, vehicle vessel weapon, trap or tool that has used for committing an offence and has been seized shall be the property of the state government. If any of the above is found in the sanctuary or a National Park declared by the Central Government then it shall be property of the Central Government. In ***Rajendra Kumar V. Union of India***, the petitioner challenged the vis of the above clause which imposed a complete ban on import of ivory and articles made from it. It affected his livelihood and freedom of trade and business provided under Article 19(1). Moreover, he contended that ivory derived from a mammoth was not ivory derived from a scheduled

animal, therefore, any article made out of such fossil ivory could not be brought within the purview of the Act. But the Court observed that, the Chapter V-A of this Act, is incorporated in accordance with the direction of Convention on International Trade in Endangered Species of Wild Fauna and Flora [CITES]. The object and reasons of the Amendment Act, 1991 make it amply clear that trade in African ivory is proposed to be banned after giving due opportunity to traders to dispose of the existing stocks. So, this Section cannot be void.

Prevention and Detection of offences: Sec. 50 of this Act confers power of entry, search, arrest and detention on the Director or any other officer authorized by him or the chief wildlife warden or officer authorized by him or any Police officer not below the rank of Sub-inspector. officer not below the rank of Assistant Director of Wildlife Preservation or Wildlife Warden shall have the powers to issue a search warren, to enforce the attendance of witnesses, to compel the discovery and production of documents and material objects and to receive and record evidence.

Cognizance of offence: No court shall take cognizance of any offence against the Wildlife Protection Act except on a complaint by: The Director of wildlife preservation or any other officer authorized in this behalf by the Central Government or; The Chief Wildlife Warden or any other officer authorized by the State Government; or, any person who has given notice of not less than 60 days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Central Government or the State Government or the officer authorised as aforesaid.

Punishments: Provided that where the offence committed is in relation to any animal specified in Schedule I or Part II of Schedule. II, or meat of any such animal, animal article, trophy, or uncurled trophy derived from such animal or where offence [relates to hunting in, or, altering the boundaries of a sanctuary or a National Park, such offence shall be punishable with imprisonment for a term which shall not be less than [one year] but may extend to six years and also with fine which shall not be less than five thousand rupees. Provided further that in the case of a second or subsequent offence of the nature mentioned in this sub-section, the term or imprisonment may extend to six years and shall not be less than two years and the amount of fine shall not be less than ten thousand rupees .Any person who contravenes any provisions of Chapter VA, [Prohibition of Trade or Commerce in Trophies, Animal Articles, etc. derived from Certain Animals.] shall be punishable with imprisonment for a7 term which shall not be less than one year but which may extend to seven years and also with fine which shall not be less than five thousand rupees.

Any person who contravenes the provisions of Section 38J [tease, molest, injure or feed any animal or cause disturbance to the animals by noise or otherwise, or litter the grounds in a zoo] shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to two thousand rupees, or with both. Provided that in case of second or subsequent offence the term of imprisonment may extend to one year or the fine may extend to five thousand rupees As per section 52, whoever attempts to contravene, or abets the contravention of, any of the provisions of this Act or of any rule of order made hereunder shall be deemed to have contravened that provision or rule or order, as the case may be.

If any person, exercising powers under this Act, vexatiously and unnecessarily seizes the property of any other person on the pretence of seizing it for the reasons mentioned in sec. 50, he shall, on conviction, be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Forfeiture of Property: Derived from Illegal Hunting and Trade A new chapter, Chapter VI-A, had been incorporated by the Wildlife (Protection) Amendment Act of 2002. According to this new chapter, if any person or associate of persons or trust acquires property from illegal hunting or trade of wildlife, it shall be forfeited to the State Government by the competent authority. Such property can be forfeited after taking all necessary steps (inquiry, investigation or survey in respect of any person, place, property, documents institution, etc.) and after tracing and identifying any such property.

During the investigation and proceeding of forfeit the property, if the competent authority finds that only a part of the acquired property is proved illegal, the authority shall make orders, giving an opportunity to the person affected, to pay a fine equal to the market value of such part of property in lieu of forfeiture.

Conclusion: The key environmental challenges that the country faces relate to the nexus of environmental degradation with poverty in its many dimensions, and economic growth. These challenges are intrinsically connected with the state of environmental resources, such as land, water, air, and their flora and fauna. The proximate drivers of environmental degradation are population growth, inappropriate technology and consumption choices, and poverty, leading to changes in relations between people and ecosystems, and development activities such as intensive agriculture, polluting industry, and unplanned urbanisation. The status of wildlife in a region is an accurate index of the state of ecological resources, and thus of the natural resource base of human well-being. This is because of the interdependent nature of ecological entities, in which wildlife is a vital link.

Moreover, several charismatic species of wildlife embody Incomparable Values, and at the same time, comprise a major resource base for sustainable development. Conservation of wildlife, accordingly, involves the protection of entire ecosystems.

We have to keep these perspectives in mind while going through the Wildlife (Protection) Act 1972. Since the wildlife is a vital link in the web of lives, it is our utmost duty to preserve and protect the richness of wildlife as it can be made available to generations. So the endangered species of flora and fauna should be protected. The Wildlife (protection) Act, with timely amendments, facilitates the protection of wild life in India. With these observations, I conclude my topic on Wildlife (Protection) Act, 1972.

Q. Discuss the various legislative measures available in India to control noise pollution. Discuss the judicial attitude towards control of noise pollution through a landmark judgement in this regard.

Noise is not a recent problem. It has a long history. Two thousand five hundred year ago, the ancient Greek colony of syber knew of measures to check noise. They had rules to protect sleep and provide a quiet and peaceful life to citizens. Loud sounds wew prohibited by Julius Caesar who also banned movements of noisy chariots at night. In China, noise was a form of execution for those who insulted the heavenly powers. Guilty persons were subjected to the sounds of fluids, drums and shouts of persons continuously day and night until they died.

Noise is a type of atmospheric pollution in the form of waves. It is a shadowy public enemy. It has increased in the modern age of industrialisation and technological advancement.

The encyclopedia Britannica defines noise as “any undesired sound.” According to this definition, “a sound of church bells may be music to some and noise to others. Usually noise is a mixture of many tones combined in a non-musical manner.”

The American jurisprudence analysis noise as an unwanted sound that produces unwanted effects, sound without value and sources are aircraft and airports, vehicular traffic, railways, industrial activities.

NOISE AND SOUND: In considering our acoustic environment, we must differentiate between these two terms, i.e., noise and sound. It has only when the effects of a sound are undesirable, it may be termed as a noise. Sometimes it has an agreeable musical quality. It is a pleasant to a group of people or individual or undesirable to another individual or group of people or a sick person. Physically, sound is a mechanical disturbance propagated as a wave motion in the air and other elastic or mechanical media such as water or steel.

The human ear is very sensitive to sound waves of the frequency of 20 Hertz Hz) to 2000Hz pitch, but not all sounds are detectable by the human ear. There are two types of sound:1) ultra sound, and 2) intra sound.

1) Ultra Sound is that sound in which the frequency range exceeds approximately 15 kHz. It is beyond the upper limit of normal hearing, ie., it has a frequency too high to excite the sensation of hearing.
2) Intra Sound is the sound in which sound is below a frequency of about 16Hz. It is below the lower limit of normal hearing. It is commonly referred to as vibration.

EFFECTS OF SOUND POLLUTION

Lack of concentration– For better quality of work there should be a minimum concentration. Noise causes lack of concentration in big cities mostly all the offices are on main road. The noise of traffic or the loudspeakers of different types of horns divert the attention of the people working in office.

Cause of blood pressure– noise pollution causes certain diseases inhuman. It act acts on the persons piece of mind the noises are recognized as major contributing factors in accelerating the already existing tensions of modern living these tensions results in certain diseases like blood pressure or mental illness.

Effect on vegetation – now its well-known fact that plants are similar to human being they are also as sensitive as men there should be cool and peaceful environment for their better growth. Noise pollution cause poor quality of crops in a pleasant atmosphere.

Physiological effects-Noise produces very adverse physiological effects on human health. Its effect is not known at once, but its effects are like a slow poison. The effects are not only on human beings but on birds and animals too. Birds stop laying eggs and breeding and animals stop mating in season.

SOURCES OF NOISE POLLUTION: It can be classified into two classes:
1) **Industrial sources**—The industrial sources may include noise from various industries operating in cities like boiler, machinery, foundry, cutting machines, etc. noise is a by- product of energy conservation and every industry produces noise. Pollution due to big machines working at a high speed have high noise intensity.

2) **Non-industrial sources**. —Non-industrial sources of noise can further be divided into the following:
Loudspeaker, trains, aircraft, construction work, crowded bazaars, social religious, political gatherings including sports field, sirens, and generator sets.

Indian Constitution and noise pollution control

The Indian Constitution of 1950 did not have any provisions directly dealing with environmental pollution. But the 42nd Amendment of Constitution passed in 1996 inserted article 48-A and Article 51-A to protect and improve the environment as has been discussed in Chapter II.

Thus, India became one of the few countries of the world which enshrined in its Constitution, a commitment to environmental protection and improvement. It has interjected a new dimension to public responsibility by obligating the Central Government to protect and improve the environment for the good of society as a whole. So, the Constitution makes a dual provision by way of directives to the state for the protection and improvement of the environment and imposing a duty on every citizen to help in the preservation of the natural environment.

In ***State of Rajasthan v. G Chawla***, a unique question came up before the Supreme Court whether the State Legislation has right to prevent and control noise pollution and make it punishable? Do such restrictions or State enactments amount to violation of the freedom of speech for prevention and control of noises? The Supreme Court was of the opinion that this freedom is not absolute. It is subjected to the restrictions under Article 19(2). This clause (2) of Article 19 provides certain reasonable restrictions which can be in the freedom of speech and expression. Thus, if any law, pre-constitutional or post-constitutional, imposes reasonable restrictions in the interest of public order, it is constitutional. In this case, the Ajmer (Sound Amplifier Control) act, 1952 was challenged as violative of freedom of speech and expression and that the State Government had no power under the Constitution to enact such laws.

The Supreme Court declared that the said act is not unconstitutional as it is a reasonable restriction in the interest of public order and the state is also empowered to enact such laws. To make things clearer it was observed by the court that the state can make laws in the exercise of its power under Entry 8, "Public Health and Sanitation of List II provided under Seventh Schedule". Thus, the states "have the right to control loud noises when the rights of such user, in disregard to the comfort and obligations to others, emerges as manifest nuisance to them". Thus, laws to control loud noises and music enacted by various states are within the permissible limits of the Constitution and are a reasonable restriction on the freedom of speech and expression. The court made it clear that persons are free to make noise but not to transgress the right of others to live peacefully. As soon as noise become a nuisance, interferes in the use or enjoyment of property or annoys others, the laws imposing restriction will come into operation and the constitutional freedom activity. Such activity is also violative of the constitutional duty imposed on every citizen of India under Article 51-A to protect and improve the natural environment.

Other Laws regarding Noise Pollution

Now let's elucidate the other laws regarding sound pollution. In **Section 133, Code of Criminal Procedure** the magistrate court have been empowered to issue remove or abate nuisance caused by noise pollution u/s 133 empowers and executive magistrate to interfere and remove a public nuances in the first instance with a conditional order and then with a permanent one the provision can be utilized in case of nuance of environment nature. In **Law of Torts** noise pollution is considered as a civil wrong. Under Law of Torts a civil suit can be filed claiming damages for the nuisance. For filing a suit under Law of Torts a plaintiff is required to comply with some if the requirement of torts of nuisances which are interference should be with the use and enjoyment of land. , there should be reasonable interference.

Section-2 (A) of the Air (prevention and control of pollution) Act, 1981 includes noise in the definition of "Air Pollution" – This section states Air pollution means any solid, liquid or gaseous substance including noise present in the atmosphere. Such concentration as may be or tend to injuries to human being or other living creatures or plants or property or environment.

Section-2 (C) of the Environment Protection Act, 1986 defines environmental pollution to mean the presence in the environment of any environmental pollutant.

In a landmark judgement given by apex court in ***Mulan Mufti Syud and others V. State of West Bengal AIR 1999*****,** The court held imposition of restriction on the use of microphone and loudspeaker by the state govt. between 9 pm to 7 am which inter alia include restriction of azan on microphone in early hours, before 7 am is not violative of Article 25 of Constitution of India guarantying of freedom of religion.

In ***Shobha Rama Subramanayyam v. The Member Secretary, Chennai Metropolitan Authority***, The Court stated that the construction builders have a duty to use modes for digging foundation for multistory buildings, so that it does not cause noise pollution in the neighboring areas.

Conclusion: It is the need of time to have a rigid rules and regulations regarding prevention and control of noise pollution. But there is a need for creating general awareness towards the hazardous effects of noise pollution. Particularly, in our country the people generally lack consciousness of the bad effects which noise pollution creates. Holding of special talks and lectures can be organized in the schools to highlight the menace of noise pollution and the role of the children in preventing it. Every person has a duty to check and prevent pollution. The power of Supreme Court must be widened with respect to environment pollution so that court could apply their mind beyond the doors and windows of the court in order to enforce the environmental matters in toto.

Q. What is the meaning of 'silence zone' as laid under the Noise Pollution (Regulation and Control) Rules, 2000? Explain the restrictions on the use of loud speaker system under the Noise Pollution (Regulation and Control) Rules, 2000.

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The Noise Pollution (Regulation and Control) Rules, 2000: Under the Environment (Protection) Act, 1986, the Central government made the Noise Pollution Rules in 2000 for regulation and control of noise producing and generating sources.

The Rules explain the objectives in these words: "Whereas the increasing ambient noise levels in public places from various sources, inter-alia, industrial activity, construction activity, generator sets, loudspeakers, public address systems, music systems, vehicular horns and other mechanical devices have deleterious effects on human health and the psychological well-being of the people, it is considered necessary to regulate and control noise producing and generating sources with the objective of maintaining the ambient air quality standards in respect of noise."

The Rules relate to the following:

1. Development Activities: All development authorities and local bodies while planning development activity or carrying out functions relating to town and country planning shall take into consideration all aspects of noise pollution as a parameter of quality of life to avoid noise menance and to achieve the objective of maintaining the ambient air quality standards in respect of noise.

2. Silence Zone: An area comprising not less than 100 metres around colleges, schools, hospitals and courts comes under silence zone.

3. Noise Standards for Different Zones: For the purpose of implementation of noise standards for different zones, the State Governments may categorize the areas into industrial zone, commercial zone, and silence zone.
The State government shall take necessary measures for abatement of noise including noise emanating from vehicular movements. It should ensure that the existing noise levels do not exceed the ambient air quality standards specified under Rules 2000.

Consequences of any Violation in Silence Zone: Whoever, in any place covered under the silence zone commits any offence, he / she shall be liable for penalty under the provisions of the Rules 2000 as under
(a) Whoever plays any music or uses any sound amplifiers;
(b) Whoever beats a drum or tom-tom or blows a horn either musical or pressure or trumpet or beat or sounds of any type of instruments;
(c) Whoever exhibits any mimetic, musical or other performances which attract crowds near the silence zone.

Restrictions on the Use of Loudspeakers or Public Address System
(a) A loud-speaker or a public address system shall not be used except after obtaining written permission from the district/local authorities.
(b) A loudspeaker or a public address system shall not be used at night (between 10 P.M. to 6 A.M.) except in closed premises for communication within an institution's auditorium, conference rooms, community halls, and banquet halls.

A person may, if the noise level exceeds the ambient noise standards by 10dB (A) or more, make a complaint to the authority. The authority shall act on the complaint and take action against the violator in accordance with the provisions of these rules.

Q. Explain the restrictions on the use of loud speaker system under the Noise Pollution (Regulation and Control) Rules, 2000.
Under Rule 5 of the Noise Pollution (Regulation and Control) Rules, 2000 use of loudspeakers/public address system is restricted in the following manner:
A) They can only be used after obtaining permission from any authority or officer authorised by the Central Government, or as the case may be, the State Government in accordance with the laws in force and includes a District Magistrate, Police Commissioner, or any other officer, not below the rank of the Deputy Superintendent

of Police, designated for the maintenance of the ambient air quality standards in respect of noise under any law for the time being in force.
B) The loudspeaker or a public address system shall not be used at night (between 10.00 p.m. to 6.00 a.m.) except in closed premises for communication within, e.g. auditoria, conference rooms, community halls and banquet halls.
C) The State Government may, subject to such terms and conditions as are necessary to reduce noise pollution, permit use of loudspeakers or public address systems during night hours (between 10.00 p.m. to 12.00 midnight) on or during any cultural or religious festive occasion of a limited duration not exceeding fifteen days in all during a calendar year.

Further the Supreme Court of India has passed the following directions in ***Noise Pollution (V), In re*, *(2005) 5 SCC 733* at page 782**:
1. The noise level at the boundary of the public place, where loudspeaker or public address system or any other noise source is being used shall not exceed 10 dB(A) above the ambient noise standards for the area or 75 dB(A) whichever is lower.
2. No one shall beat a drum or tom-tom or blow a trumpet or beat or sound any instrument or use any sound amplifier at night (between 10.00 p.m. and 6 a.m.) except in public emergencies.
3. The peripheral noise level of privately-owned sound system shall not exceed by more than 5 dB(A) than the ambient air-quality standard specified for the area in which it is used, at the boundary of the private place.

Q. Discuss briefly the Public Liability Insurance Act, 1991.
The Public Liability Insurance Act 1991, provides for mandatory Public Liability Insurance. Under the Act, companies need to take for installing, handling any hazardous substance notified under the Environment Protection Act.

The growth of hazardous industries, processes and operations in India has been accompanied by growing risks of accidents, not only to the workmen of such undertakings, but also members of the public in the vicinity.

Therefore, under Public Liability Insurance Act 1991, every owner, before starting to handle any hazardous substance, have to take out one or more policies covering liabilities for providing immediate relief on a specified scale to any person suffering injury or damage to property, in the event of death, to the legal heirs of the deceased. The Public Liability Insurance Act, 1991, has been enacted for providing immediate relief to the persons affected by accidents, occurring while handling any hazardous substance and for other incidental and connected matters.

Application for Relief: Under the Public Liability Insurance Act an application for relief made by the applicant to the Collector within 5 years of the accident, after giving notice to the owner and the insurer and giving the parties an opportunity of being heard, shall make the award determining the amount of relief payable. The victim will however be free to approach the Court for higher compensation.

Establishment of Relief Fund: Section 7A of the Public Liability Insurance Act, empowers the Central Government to establish Environment Relief Fund, by notification in the official Gazette, towards the utility of paying relief under an award made by the collector under Section 7 of this Act.

Power to Call for Information, Entry and Inspection: Public Liability Insurance Act deals with the powers to call for information, entry, inspection, search and seizure. The owner of hazardous installation becomes obligated to submit to a person authorized by the Central Government such information the inspector reasonably needs for the purpose of ascertaining, any requirements, rule or directions made under this Act, require compilation.

Power to give directions: Section 12, of the Public Liability Insurance Act 1991 empowers the Central Government to issue directions in writing to any owner, officer, or agency. The directions also include the

prohibition or regulation of handling hazardous substances. Moreover, it also can control the supply or stoppage of electricity.

Offences and Penalties: The Public Liability Insurance Act 1991 provides for the penalties of non-compliance:
Non-compliance of not taking an insurance policy.
Furthermore, failure to comply with any direction issued with regard to prohibition or regulation of the handling of any hazardous substance or stoppage of supply of electricity, water etc.
Punishable with an imprisonment for a minimum period of one year and six months but which may extend to six years, or with fine, which shall not be less than one lakh rupees or with both.
For subsequent offences, the person shall be punishable with the minimum imprisonment of two years. However, it can extend to seven years, with fine of not less than 1 lakh rupees.

Q. Discuss the rule of Strict Liability and absolute liability with exceptions if any to these rules.
Strict Liability: The principle of strict liability evolved in the case of *Rylands v Fletcher*, *(1868) L.R. 3 H.L. 330*. In the year 1868, the principle of strict liability states that any person who keeps hazardous substances on his premises will be held responsible if such substances escape the premises and causes any damage. Going into the facts of the case, F had a mill on his land, and to power the mill, F built a reservoir on his land. Due to some accident, the water from the reservoir flooded the coal mines owned by R. Subsequently, R filed a suit against F. The Court held that the defendant built the reservoir at his risk, and in course of it, if any accident happens then the defendant will be liable for the accident and escape of the material.

Going by the principle laid in this case, it can be said that if a person brings on his land and keeps some dangerous thing, and such a thing is likely to cause some damage if it escapes then such person will be answerable for the damaged caused. The person from whose property such substance escaped will be held accountable even when he hasn't been negligent in keeping the substance in his premises. The liability is imposed on him not because there is any negligence on his part, but the substance kept on his premises is hazardous and dangerous. Based on this judicial pronouncement, the concept of strict liability came into being. There are some essential conditions which should be fulfilled to categorize a liability under the head of strict liability.

Essentials of Strict Liability
Dangerous Substances: The defendant will be held strictly liable only if a "dangerous" substances escapes from his premises.
For the purpose of imposing strict liability, a dangerous substance can be defined as any substance which will cause some mischief or harm if it escapes. Things like explosives, toxic gasses, electricity, etc. can be termed as dangerous things.

Escape: One more essential condition to make the defendant strictly liable is that the material should escape from the premises and shouldn't be within the reach of the defendant after its escape.
For instance, the defendant has some poisonous plant on his property. Leaves from the plant enter the property of the plaintiff and is eaten by his cattle, who as a result die. The defendant will be liable for the loss. But on the other hand, if the cattle belonging to the plaintiff enter the premises of the defendant and eats the poisonous leaves and die, the defendant would not be liable. In the judicial pronouncement of ***Reads v. Lyons & Co., [1947] AC 156 House of Lords*** it was held that if there is no escape, the defendant cannot be held liable.

Non-natural Use: To constitute a strict liability, there should be a non-natural use of the land. In the case of *Rylands v. Fletcher*, the water collected in the reservoir was considered to be a non-natural use of the land. Storage of water for domestic use is considered to be natural use. But storing water for the purpose of energizing a mill was considered non-natural by the Court. When the term "non-natural" is to be considered, it should be kept in mind that there must be some special use which increases the danger to others. Supply of cooking gas through the pipeline, electric wiring in a house, etc. is considered to be the natural use of land. For

instance, if the defendant lights up a fire in his fireplace and a spark escapes and causes a fire, the defendant will not be held liable as it was a natural use of the land.

Exception to the Rule of Strict Liability: There are certain exceptions to the rule of strict liability, which are-
Plaintiff's Fault: If the plaintiff is at fault and any damage is caused, the defendant wouldn't be held liable, as the plaintiff himself came in contact with the dangerous thing.
In the judicial pronouncement of ***Ponting v Noakes, (1849) 2 QB 281*** the plaintiff's horse died after it entered the property of the defendant and ate some poisonous leaves. The Court held that it was a wrongful intrusion, and the defendant was not to be held strictly liable for such loss.

Act of God: The phrase "act of God" can be defined as an event which is beyond the control of any human agency. Such acts happen exclusively due to natural reasons and cannot be prevented even while exercising caution and foresight. The defendant wouldn't be liable for the loss if the dangerous substance escaped because of some unforeseen and natural event which couldn't have been controlled in any manner.

Act of the Third Party: The rule also doesn't apply when the damage is caused due to the act of a third party. The third party means that the person is neither the servant of the defendant, nor the defendant has any contract with them or control over their work. But where the acts of the third party can be foreseen, the defendant must take due care. Otherwise, he will be held responsible.
For instance, in the case of ***Box v Jubb, LR 4 EX Div 76*** where the reservoir of the defendant overflowed because a third party emptied his drain through the defendant's reservoir, the Court held that the defendant wouldn't be liable.

Consent of the Plaintiff: This exception follows the principle of *violenti non fit injuria*. For instance, if A and B are neighbors, and they share the same water source which is situated on the land of A, and if the water escapes and causes damage to B, he can't claim damages, as A wouldn't be liable for the damage.

Absolute Liability
The rule of absolute liability, in simple words, can be defined as the rule of strict liability minus the exceptions. In India, the rule of absolute liability evolved in the case of ***MC Mehta v Union of India, A.I.R. 1987 S.C. 1086.*** This is one of the most landmark judgment which relates to the concept of absolute liability.

The facts of the case are that some oleum gas leaked in a particular area in Delhi from industry. Due to the leakage, many people were affected. The Apex Court then evolved the rule of absolute liability on the rule of strict liability and stated that the defendant would be liable for the damage caused without considering the exceptions to the strict liability rule.

According to the rule of absolute liability, if any person is engaged in an inherently dangerous or hazardous activity, and if any harm is caused to any person due to any accident which occurred during carrying out such inherently dangerous and hazardous activity, then the person who is carrying out such activity will be held absolutely liable. The exception to the strict liability rule also wouldn't be considered. The rule laid down in the case of *MC Mehta v UOI* was also followed by the Supreme Court while deciding the case of Bhopal Gas Tragedy case. To ensure that victims of such accidents get quick relief through insurance, the Indian Legislature passed the Public Liability Insurance Act in the year 1991.

Concluding Remarks: The rule of strict liability and absolute liability can be seen as exceptions. A person is made liable only when he is at fault. But the principle governing these two rules is that a person can be made liable even without his fault. This is known as the principle of "no fault liability." Under these rules, the liable person may not have done the act, but he'll still be responsible for the damage caused due to the acts. In the case of strict liability, there are some exceptions where the defendant wouldn't be made liable. But in the case of absolute liability, no exceptions are provided to the defendant. The defendant will be made liable under the strict liability rule no matter what.

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Q. Discuss the various constitutional mandates which deal with protection of environment in our country.
The Indian Constitution is amongst the few in the world that contains specific provisions on environment protection. The chapters directive principles of state policy and the fundamental duties are explicitly enunciated the nation commitment to protect and improve the environment. It was the first time when responsibility of protection of the environment imposed upon the states through Constitution (Forty Second Amendment) Act, 1976.

Article 48-A the provision reads as follows: "The State shall endeavor to protect and improve the environment and to safeguard the forest and wildlife of the country." The Amendment also inserted Part VI-A (Fundamental duty) in the Constitution, which reads as follows:

Article 51-A (g) "It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, and wildlife and to have compassion for living creature."

In ***Sachidanand Pandey* v. *State of West Bengal*, *AIR 1987 SC 1109*** the Supreme Court observed "whenever a problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A and Article 51-A(g).

The Constitution 42nd Amendment Act, 1976 which moved forest, wildlife and population control from the State to the Concurrent List enabling both the state and the centre to make laws pertaining to these areas is one of the examples out of the several initiatives taken by the Indian Government towards environment protection.

There is no doubt in saying that it is the responsibility of the State to protect the environment. However, it took a long time for the Apex Court to pronounce explicitly that the right to life under Article 21 of the Constitution contains right to have a healthy environment.

Steps Taken Post Stockholm Conference, 1972
Several environmental legislations existed even before the independence of India. However, the major development took place after the UN Conference on the Human Environment (Stockholm, 1972). After the conference, the National Council for Environmental Policy and Planning was set up in 1972 within the Department of Science and Technology to establish a statutory body to look after the environment related issues.

The council later evolved into a fully-fledged Ministry of Environment and Forests (MoEF). MoEF was established in 1985 and today is the apex Administrative body in the country for regulating and ensuring environmental protection and; lays down the necessary legal framework for the same. Further, since the 1970s a lot of environmental legislation have been laid down. MoEF and various Pollution Control Boards ("CPCB" i.e. Central Pollution Control Board and "SPCB" i.e. State Pollution Control Board) together form regulatory and administrative core of the sector.

Apart from establishing numerous pollution control boards and MoEF, various other legislation like The Air Act and the Environment Protection Act (EPA) were also enacted. Moreover, as their long titles show, these Acts were enacted by virtue of the provision in Article 253 of the Constitution to implement the decisions of the international conferences and conventions. Indian Parliament also enacted Wildlife Act and the Water Act by exercising its power under Article 252 of the Constitution of India.

Steps taken by the Indian Government and Judiciary towards Environment Protection
The right to live in a clean and a healthy environment is not a recent invention of the Indian Judiciary. The only difference is that the right has been recognised as a fundamental right by the Indian Judiciary over the period of time. The right to live in a clean and healthy environment existed from centuries ago, but it attained the status of 'Fundamental Right' only a few years back. The judiciary has widened the ambit of Article 21 by including right to have a clean environment in it and further making it a fundamental right.

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Article 21 talks about the right to life and personal liberty, it reads as follows "No person shall be deprived of his life and personal liberty except according to procedure established by law". This article imposes a duty on the state to protect the life and liberty of the people. The concept of this article has been broadened by judicial pronouncement. In the case of ***Subhash Kumar v State of Bihar***, it was held that 'right to life' guaranteed under Article 21 includes the right to have pollution-free water and air. Through this case the court recognised the right to a wholesome environment as part of the Fundamental Right, making it a landmark judgment.

In the case titled as ***Rural Litigation and Environment Kendra, Dehradun v. State of UP*** the representatives of the rural litigation and entitlement Kendra, Dehradun wrote to the Supreme Court alleging that illegal mining in the Mussoorie-Dehradun belt is causing damage to the eco-system. Therefore, the court ordered the closure of a number of limestone quarries.

Moreover, the issue of vehicular pollution was discussed in the case titled as ***M.C. Mehta v. Union of India***. The apex court, in this case, reaffirmed that the right to a healthy environment as a basic human right and held that right to clean air also stems from Article 21 which talks about right to life. It is considered to be a landmark judgment, as after this judgment lead-free petrol supply was introduced in Delhi.

Further, The Constitution of India originally adopted did not have any direct and specific provision regarding the protection of natural environment. It only contained few directives to the State regarding public health, agriculture and animal husbandry but none were judicially enforceable. Some of the Directive Principles of State Policy showed a minute inclination towards environmental protection i.e. Article 39(b), 47, 48 and 49 which individually and collectively impose a duty on the State to take measures for improving the general health of the environment and provide a clean environment to the country.

However, later through a constitutional amendment, two specific provisions i.e. Article 48- A and Article 51-A (g), has been added to the Constitution which puts a duty on the State as well as the citizens of India to protect and conserve the environment.

Conflict between Environment Protection and Citizen's Rights

The freedom of expression under Art 19(1) (a), right to carry on a business, trade or occupation under Art 19(1) (g), freedom of religion under Art 25 and above all equality under Art 14 are the areas where these conflicts arise in contradiction with the right to a healthy environment under Art 21. An inquiry into the cases will reveal, as to how the Courts reconciled the two issues.

A. Land Use: In ***T Damodhar Rao v Special Officer Municipal Corp, Hyderabad*****,** it was held for the very first time by an Indian Court that the conversion of open space, the lungs of a populated area, would affect the right to life under Art 21 of the constitution. Later, in ***Bangalore Medical Trust v BS Mudappa*** the Supreme Court proceeded with the same vigour and prevented using the open space for constructing a private medical complex.

Similarly, in ***V Lakshmipathy v. State***, the petitioners challenged the location and operation of industries and industrial enterprises in a residential area as violative of Karnataka Town and Country Planning Act, as well as the right to life under Art 21 of the Constitution. The court held that the mandate of the Constitution is to build a welfare society and for that utmost priority should be given to the environmental protection and its preservation. Thus, neglecting this will be an invitation to a disaster.

B. Freedom of Trade and Property: In ***Residents of Sanjay Nagar v. State of Rajasthan***, the Rajasthan High Court came across an interesting situation. In this case the owners of the slaughterhouse were discharging untreated animal blood in the drains of the residential colony, where it was situated. Consequently, the court reminded the owners of their duties under Art 21 and 48A for protecting and improving a clean environment and ordered them to shut the slaughterhouse. An observation made by the Supreme Court in one of the MC Mehta cases is in consonance with the above-mentioned judgment. It was pointed out in *MC Mehta v Union of*

India that the most vital necessities, namely air, water and soil having regard to the right to life under Art 21 cannot be permitted to be misused and polluted so as to reduce the quality of life of others.

Moreover, the case titled as ***Ivory Traders and Manufacturers Association v. Union of India*** is another example of a judgment, restricting the fundamental right of the citizens for preserving and safeguarding the environment. It was held that any trade which is detrimental to the environment, can totally be banned without attracting Art 19(1) (g) of the Constitution. It was further held that any trade which involves killing of animals like elephants, in this case, cannot be taken as business or trade in the sense of Art 19(1)(g) of the Constitution.

C. Constitutional Obligations of Hazardous Industries: The Supreme Court in ***MC Mehta v Union of India*** has ruled that an enterprise which has engaged in a hazardous or inherently dangerous industry which poses a potential threat to health and safety of persons working in the industrial unit and residing in the surrounding areas, owes and absolute obligation to the community to ensure that no harm results to anyone on account of such hazardous or inherently dangerous nature of the activity.

D. Restriction Freedom of Speech: The Constitution of India grants every citizen the Right to Freedom of Speech and expression. However, if it impinges upon the rights of another then it can be restricted. Noise pollution is a notable example of such impingement. In ***Rajni Kant v State*** the petitioner, the leader of a political party was not allowed to use loudspeakers in the public meeting he wanted to organise. The petitioner, in this case, contended that such restriction is violative of his right to freedom of speech under Art 19(1) (a) of the Constitution. The court held that the impugned bylaws do not infringe Art 19(10 (a) of the Constitution.

Conclusion: It can be easily deduced from the above-mentioned cases that though the facts and circumstances of all the cases are different but the underlying principle in all the cases is the same i.e. protection and preservation of the environment. Initially, the Indian Government adopted a very lackadaisical attitude towards the conservation of the environment, by not including any legally enforceable principles in the Constitution of India. However, with the passage of time the State realised the blunder that they have made and thus, started making conscious efforts in not only protecting the environment but in developing it too. The evolution was slow but it happened in due time and as it is said better late than never. Moreover, the importance of ***Murali S Deora v Union of India*** cannot be undermined, as this judgment declared the pollution caused by smoking, violative of Article 21 of the Indian Constitution.

The right includes the right to health and the right not to be afflicted by diseases. The decision, undoubtedly promotes the aims behind EPA, namely protection and improvement of the environment. Since its incorporation into the constitution by the Forty-Second Amendment, the idea of protecting and improving the environment did not attract the attention of the Indian judiciary for a long time till the significant ruling in ***Municipal Council, Ratlam v Vardhichand*** was passed. Though the apex court moved at a snail's pace in achieving its objective of environment protection but the High Courts, interestingly made a huge leap in this respect. No wonder, the Supreme Court was quite convinced of the Constitutional mandate for environmental protection and rendered decisions with necessary interpretations and in consonance with this mandate.

Q. Explain how 'Public Interest Litigation has emerged as a weapon to redress the grievances of the people suffering from the hazardous effect of the pollution on environment and ecology.

Contrary to the past practices (strictly as per the *locus standi* principle) wherein, only a person himself/herself, being aggrieved, could have come knocking the doors of the courts, today a person acting bona fide and having sufficient interest can move the courts for redressing public injury, enforcing public duty or for protecting social and collective rights and interests. This is known as the dilution of the principle of *locus standi.* The ability to invoke the jurisdiction of the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution of India is a remarkable step forward in providing protection for the environment. Courts have widened the dimensions of the substantive rights to health and a clean and unpolluted environment. In most cases, this progress was made with aid of PIL. The courts by allowing a case to be filed as PIL have shown that the procedure cannot come in the way of ensuring that the justice is done. In ***Tarun Bhagat Sangh Alwar v. Union***

of India**,** a social action group challenged the legality of granting a mining license in the protected area of a forest. Upholding the contention, the Supreme Court observed;
"This litigation should not be treated as the usual adversarial litigation. Petitioners are aid of a purpose high on the national agenda. Petitioners concern for the environment, ecology and the wildlife should be shared by the Government"

The observation of the Court is important as it emphasises the rationale of PIL in environmental issues. Any person who raises an environmental issue, whether individual, group or institution is equally concerned with the problem as is the State. Such litigation can never be considered as one of adversarial confrontation with the State. In the 1984 case of ***'Bandhua Mukti Morcha v. Union of India'***, Justice P. N. Bhagwati stated that if a person was physically or economically unable to approach the Court, he/she "may move the Court even by just writing a letter," because the legal system would otherwise be inaccessible to some of its citizens.

The range of issues in PILs has been very broad. It extends from compassion to animals and privileges of tribal people and fishermen, to the eco-system of the Himalayas and forests, eco-tourism, land use patterns and problems facing a village due to ecological damage. The cause of environment has been taken up before courts through PIL by a wide spectrum of people in society. Lawyers, association of lawyers, environmentalists, groups and centers dedicated to environment protection and forest conservation, welfare forums, consumer research centers have successfully agitated environmental issues before Courts.

TECHNIQUES OF ISSUING DIRECTIONS: The powers of the Supreme Court to issue directions under Article-32 and that of the High Courts to issue directions under Article-226 have attained great significance in environmental litigation. There are several such directions which have resulted as milestones in the path of environmental protection.

Evolution of doctrines in environmental jurisprudence: The formulation of certain principles to develop a better regime for protecting the environment is a remarkable achievement of PILs. In *'M. C. Mehta* v. *Union of India'*, the Supreme Court formulated the doctrine of 'absolute liability' for harm caused by hazardous and inherently dangerous industries.

In *Sludge's case* (*'I****ndian Council for Enviro- Legal Action*** **v.** ***Union of India'***, when the people in a village suffering from lethal waste left behind by a group of chemical industries were asked to be given the compensation by such industries by the Supreme Court, the Court applied the 'Polluter's Pay Principle'.

The 'Precautionary Principle' came to be directly applied in ***M. C. Mehta*** **v.** ***Union of India****,* for protecting the Taj Mahal in Agra from air pollution. Expert studies proved that emissions from coke/coal-based industries in the vicinity of Taj Mahal had damaging effect on Taj Mahal. The Supreme Court ordered that the potential polluters had to change over to natural gas as an industrial fuel and those that were not in a position to obtain gas connections for any reason-should stop functioning in the vicinity of Taj Mahal and relocate themselves in alternative plots outside the demarcated area within a stipulated time.

The Supreme Court has also applied the principle of 'Sustainable Development' in several cases to balance the developmental concerns with the ecological balance. The **Rural Litigation and Entitlement Kendra v. State of U.P.** can be cited as an example here.

Protection of Social Environment: The rights to livelihood and clean environment are of grave concern to the courts whenever they issue a direction in an environmental case. Labourers engaged in the asbestos industry were declared to be entitled to medical benefits and compensation for health hazards which were detected after retirement by the Hon'ble Supreme Court in **'CERC v. Union of India'**.

Filling gaps in law and lacunae in administration: In most cases courts have issued directions to remind Government authorities of their responsibility to protect the environment. Thus, directions were given to local bodies, especially municipal authorities, to remove garbage and waste and clean towns and cities.

Environmental awareness and education: The directives of the Supreme Court went to the extent of spreading environmental awareness and literacy as well as the launching of environmental education not only at the school level, but also at the college level. In ***M. C. Mehta* v. *Union of India*,** the Supreme Court emphasised the need for the awareness of environmental protection. The Court also required every State Government and Education Boards to take steps for environmental education.

Thus, it is clear from the above discussion that the PIL has played a very important role in the field of environment protection by empowering the courts in India to do whatever it can for this noble cause.

Q. Briefly narrate the concept of 'Polluter Pays Principle'. and explain it with the help of the decision given by the Supreme Court in the 'Oleum Gas Leak Case'.

Polluter Pays Principle has become a popular catchphrase in recent times. 'If you make a mess, it's your duty to clean it up'- this is the main basis of this slogan. It should be mentioned that in environmental law, the 'polluter pays principle' does not refer to "fault." Instead, it favors a curative approach which is concerned with repairing ecological damage.

It's a principle in international environmental law where the polluting party pays for the damage done to the natural environment. It is regarded as a regional custom because of the strong support it has received in most Organization for Economic Co-operation and Development (OECD) and European Community (EC) countries. International environmental law itself mentions little about the principle.

In recent days, the polluter pays principle is seen as a way of internalizing pollution-related costs within the context of the economic rationality of the enterprise. There is a close relationship between a country's environmental policy and its overall socioeconomic policy. Furthermore, under this principle it is not the responsibility of government to meet the costs involved in either prevention of environmental damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the taxpayer. But State practice does not support the view that all de-pollution costs should be borne by the polluter, particularly where transnational dispute is involved.

Case laws

It may be noted that the polluter pays principle evolved out of the rule of "absolute liability" as laid down by the apex court in ***Shriram Gas Leak Case***. In the ***Bichhri Case*** the apex court nicely weighed and balanced the conspectus of absolute liability and polluter pays principle. The court interpreted the principle to mean that the absolute liability for harm to the environment extends to the cost of restoring the environmental degradation in additions to compensating the victims of pollution. The court observed that Sec. 3 and 5 of the Environment (Protection) Act, 1986, empower the Central Government to give directions and take measures for giving effect to this principle. The "power to lay down the procedures, safeguards and remedial measures" under the omnibus power of taking all measures impliedly incorporated the polluter pays principles. Also, in ***Vellore Citizens Welfare Forum v. Union of India***, the apex court directed the Central Government to constituted separate authorities under Sec. 3(3) of the Environment Act and directed the authorities to assess the loss to the ecology/environment and recover the amount from the polluters.

In the ***Calcutta Tanneries*** Case, the task of assessment and recovery of restoration costs was assigned to an authority appointed by the State Government. The apex court also directed polluters to pay a "pollution fine" with the proceeds being credited to an "environment protection fund" for the restoration of the local environment.

Span Motel was directed to pay compensation for restitution of the environment and ecology in ***M.C. Mehta v. Kamal Nath***. In the similar case, the apex court noted:

"Pollution is a civil wrong. By its very nature, it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution has to pay damages (compensation) for restoration of the

environment. He has also to pay damages to those who have suffered loss on account of the act of the offender. Further, the offender can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner. However, the court cannot impose any pollution fine in absence of any trial and finding of guilty under the relevant statutory provisions."

In the similar case ***(2002) 3 SCC 653***, the apex court held: It would be both in public interest as well as in the interest of justice to fix the quantum of exemplary damages payable by Span Motels at Rs.10 lakhs only. The question relating to the quantum of damages on the principle of "polluter pays" will be determined separately.

In ***Pravinbhai J. Patel v. State of Gujarat***, the court directed the pollution units to either shut down or pay one percent of its gross turnover towards "Socio-economic uplift" of the affected villages. In ***Deepak Nitrite Ltd. V. State of Gujarat***, the issue was when damages for, on account of "polluter to pay" can be awarded in case of pollution caused by industries. The court held that compensation to be awarded must have some broad correlation not only with the magnitude and capacity of the enterprise but also with the harm caused by it. In the present case, the industrial units were not observing norms prescribed by State PCB. However, the High Court gave no finding that such lapse has caused damage to environment. Thus, the payment of 1% of turnover as compensation ordered by the High Court to further investigate in each of these cases and find our broadly whether there has been any damage caused by any of industrial units and that exercise need not be undertaken by High Court as if present
proceeding is an action in tort but an action in public law. In this process, it is open to the High Court to consider whether 1% of turnover itself would be an appropriate formula or not.

In ***Vijay Singh Puniya v. State of Rajasthan***, the High Court, on the principle of "Polluter pays" directed that each of the polluting industrial units shall pay to State Industrial Corporation, 15% of its turnover by way of damages. The polluter pays principle though recognized judicially in India does not find a place in the major environmental legislations viz. Water, Air and Environment Acts. In Vellore Citizens Case, the apex court stated that precautionary principle and polluter pays principle govern the law in India as is clear from Arts. 48-A and 51-A(g) of the Constitution and that, in fact, in various environmental statutes,
such as Water Act, 1974, the Environment (Provision) Act, 1986, and other statutes, these concepts are already implied.

Lack of executive action in India has led someone to comment that in essence, the "polluter pays" principle has degenerated into "pay and pollute". The CNG Vehicles case and so many other cases amplify the above point.

Q. Discuss the significance of the 'Taz Trapezium case' as decided by the Apex Court in the area of air pollution.

In this case a petition was filed by the famous Environmental lawyer M.C Mehta regarding the threat to the deteriorating beauty of Taj Mahal to invoke the Air (prevention and control of pollution) Act 1981 and Water (prevention and control of pollution) Act 1974 and Environment Protection Act 1986 for the purpose of relocation of industries to prevent emissions generated by coke or coal consuming industries having a damaging effect on Taj and people living in the TTZ, and further to direct them to change over to natural gas as industrial fuel.

According to the petitioner, the foundries, chemical/hazardous industries and the refinery at Mathura were the major sources of damage to the Taj. The sulphur dioxide emitted by the Mathura Refinery and the industries when combined with Oxygen-with the aid of moisture in the atmosphere formed sulphuric acid called "Acid rain" which had a corroding effect on the gleaming white marble. Industrial/Refinery emissions, brick-kilns, vehicular traffic and generator-sets were primarily responsible for polluting the ambient air around Taj Trapezium (TTZ).

Court took cognizance of this matter in January 1993. There were four NEERI reports, two Varadharajan reports and several reports by the State pollution Control Board. After examining all the reports and taking into

consideration other material on the record, the court had no hesitation in holding that the industries in TTZ were active contributors to the air pollution in the said area. NEERI and Varadharajan (1978) reports had specifically recommended the relocation of industries from the TTZ. Although the State Pollution Control Board had placed on record list of 510 industries which were responsible for air pollution but it confined the order only to 292 industries located and operating in Agra.

It further held that the Taj, apart from being cultural heritage, is an industry by itself. More than two million tourists visit the Taj every year. It is a source of revenue for the country. The Court monitored the petition for over three years with the sole object of preserving and protecting the Taj from deterioration and damage due to atmospheric and environmental pollution.

The objective behind this litigation was to stop the pollution while encouraging development of industry. The old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the environment and the eco-systems have to be protected. The pollution created as a consequence of development must support the carrying capacity of our eco-systems. Thereby supporting the 'Precautionary Principle' which says it's better to err on the side of caution rather to wait for the harm to take place in other words the State must Anticipate, Prevent and Attack the harm caused to the environment.

The Court ruled that *"Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person irrespective of the fact whether he took reasonable care or not. Consequently, the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas".* The "polluter Pays" principle as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development".

However, the judgment lacked in the following manner which lead to many follow up Taj Mahal Trapezium Cases:

The order only extended to 292 industries out of the 510, whose names were put forward by the pollution control board in the court. However, the rest of the industries also contributed to the pollution in some way or the other resulting in the yellowing of the marble Hence the order should have extended to all the industries and not only to 292 industries alone.

The court directed that only those industries would be relocated who refuse to accept natural gas as an alternative fuel or to whom it is not available due to some technical difficulties. In my opinion all the industries should have been directed to relocate themselves as even when natural gas would be used by the industries it would lead to only a small reduction in the pollution level and would not eliminate pollution in totality.

The judiciary scrutinized the situation for about three years from 1993 to 1996, during these three years of pendency of litigation a lot of harm was already done by the industries adding on to the existing pollution levels. A prompt action should have been taken by the court instead of spreading it over for three long years, as this was a case involving our national heritage.

The judgment only talks of coke and coal as the pollutants, there is not much emphasis on the pollution caused by the brick kilns, chemical industries, bangle and glass factories, excessive traffic on the roads of Agra and the waste being thrown by the road side shops and restaurants.

There is no mentioning of restoring the original quality of the marble, only prevention and control of pollution finds its place in the judgment. Further, it does not talk about restoring the quality of water of Yamuna. The park built by ASI is not helping the beautification of Taj Mahal but destroys the structure. Historical maps and

geographical information show Yamuna flowing close by the Taj Mahal to the extent of even touching its rear walls. The Emperor Shah Jahan built it because of the existence of the huge water body in the background. The Taj's foundation is water borne; the monument rests on huge wooden slabs placed inside the deep wells that need perennial water. It is built on a riverbank and wells were dug up 50 meters above the riverbed to form its base. It is feared that the monument could suffer serious structural damage if Yamuna becomes waterless.

In the judgment there is no mention of the harm being caused to the lives all those workers and children below the age of 12 years working in the hazardous industries causing harm to their lungs. Any activity or substance involving human intervention causing irreparable harm to the environment or the individuals needs to be eliminated. This result in absolute liability to compensate not only the harm done to the environment but also to the individuals under the polluter pays principle. The judgment nowhere talks about any compensation being made by these factory owners for the harm caused to the environment and their workers.

There is also no talk of the pollution standards for the industries which will be relocated whether they are allowed to use coke and coal in the relocated areas.

Thus, this judgment is not a very effective one in nature. It is limited to only Air pollution and not water pollution and land pollution. Because of the above-mentioned flaws, it is not a very comprehensive judgment leading to various other follow up of Taj Mahal Trapezium Cases.

Q. Write short notes:

(a) Sustainable Development

As a working definition, sustainability can be defined as the practice of maintaining processes of productivity indefinitely natural or human made by replacing resources used with resources of equal or greater value without degrading or endangering natural biotic systems. According to M. Hasna, sustainability is a function of social, economic, technological and ecological themes. Sustainable development ties together concern for the carrying capacity of natural systems with the social, political, and economic challenges faced by humanity. As early as the 1970s, the concept of "sustainability" was employed to describe an economy "in equilibrium with basic ecological support systems." Scientists in many fields have highlighted The Limits to Growth, and economists have presented alternatives, for example a 'steady state economy'; to address concerns over the impacts of expanding human development on the planet.

The term sustainable development rose to significance after it was used by the Brundtland Commission in its 1987 report Our Common Future. In the report, the commission coined what has become the most often-quoted definition of sustainable development: "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." The United Nations Millennium Declaration identified principles and treaties on sustainable development, including economic development, social development and environmental protection.

<u>Challenges for Sustainable Development in India</u>

The challenges of sustainable development and its consequences are clearly visible. It is only invisible if we not want to see. Population is a major challenge for the sustainable development. In the beginning of the 21st century the population of the Earth reached 6 billion, and is expected to level out 10 and 11 billion over the next 50 years. The basic challenges will be shortage of water and arable land for food production.

Poverty is another major challenge because almost 25% of the world's population lives on less than USD 1 per day.

Inequality continues to be a serious obstacle to sustainable development with the number of people suffering from undernourishment. The fall of food prices over the past 30 years may have contributed to increases in consumption, but in many regions of the world arable terrains are limited, and the creation of new ones has a

destructive effect on the remaining ecosystems. In the future, the growth of food production should not come at the expense of nature. By 2010 the current step of biodiversity loss should be significantly slowed.

The shortage of drinking water in many regions of the world is a major barrier to sustainable development. It is expected that, at the current rate of development, every second person will suffer from water shortage by the year 2025.

Human health is also an obstacle in sustainable development. In many cases, deaths in developing countries are avoidable. Humanity should direct more attention and money in the coming years to the struggle against diseases. The imminent task is to reduce the death rate among children under five years of age by two-thirds, and the death rate of young mothers by 75% by 2015.

Consumption of energy is a major challenge for the sustainable development. Consumption of all forms of energy is continually rising. The improvement of access to reliable, sustainable and environmentally friendly energy sources and services, as well as the creation of national programmes for energy effectiveness, is a particularly important task for the next 10-15 years.

Deforestation is particularly great challenge before the sustainable development. The world's forests diminish mainly due to expansion of agriculture. In the coming years, improving the recovery and management of the forests will be of utmost importance.

Petrol consumption is constantly rising. The Summit emphasised the need to realise the decisions of the Kyoto Protocol for reaching an agreement on emissions norms for greenhouse gases in developed countries.

Strategies for Sustainable Development in India

The conceptual meaning of sustainable development is not to create an obstacle in development process but this concept belongs to how we utilize our resources so that an inter-relationship can be established among present and future generation. To attained sustainable development many probable strategies can be useful.

Input Efficient Technology can be reducing the exploitation of resources. So, this technology may good for sustainable development.

Using of Environmentally friendly Sources of Energy, such as LPG and CNG which are eco-friendly fuel, we can reduce the greenhouse gases from the earth. Delhi Transport Corporation's initiative to CNG Buses in Delhi is the one of the best efforts to reduce CO2 and other harmful gases. Government should pay attention on Integrated Rural Development Programmes, through this the burden and interdependency on cities for employment can be decrease. To focus on renewable sources of energy like solar and wind for energy needs. It will be beneficial for the country like India, where is enough sun light, to Convert Sun light into solar Energy and Solar Energy in Electricity. It will create an atmosphere for green development. For attaining the sustainable development, it is necessary for the government and society to control on the Tragedy of Commons. It means to stop the maximum use of easily available resources. With above these government should stimulate the organic forming and recycle the wastes. Last but not least, it is responsibility of citizens to encourage the awareness to conserve the natural assets for inter-generational equality.

Sustainable development is a vision and a way of thinking and acting so that we can secure the resources and environment for our future generation. It will not be brought about by policies only it must be taken up by society at large as a principle guiding the many choices each citizen makes every day, as well as the big political and economic decisions that affect many. It is clear that environmental degradation tends to impose the largest costs on those generations that are yet to be born. Future generations are disadvantaged with regards to present generations because they can inherit an impoverished quality of life, share a condition of structural weakness in having no voice and representation among the present generation and so their interests are often neglected in present decisions and planning while it is very much needful that we think about our generation. We can only improve sustainable development when it will put an emphasis on involving citizens and

stakeholders. Ultimately, the vision will become reality only if everybody contributes to a world where economic freedom, social justice and environmental protection go hand in hand, making our own and future generations better off than now.

(b) National Green Tribunal

- It is a specialised body set up under the National Green Tribunal Act (2010) for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources.
- With the establishment of the NGT, India became the third country in the world to set up a specialised environmental tribunal, only after Australia and New Zealand, and the first developing country to do so.
- NGT is mandated to make disposal of applications or appeals finally within 6 months of filing of the same.
- The NGT has five places of sittings, New Delhi is the Principal place of sitting and Bhopal, Pune, Kolkata and Chennai are the other four.

Structure of NGT

- The Tribunal comprises of the Chairperson, the Judicial Members and Expert Members. They shall hold office for term of five years and are not eligible for reappointment.
- The Chairperson is appointed by the Central Government in consultation with Chief Justice of India (CJI).
- A Selection Committee shall be formed by central government to appoint the Judicial Members and Expert Members.
- There are to be least 10 and maximum 20 full time Judicial members and Expert Members in the tribunal.

Powers & Jurisdiction

- The Tribunal has jurisdiction over all civil cases involving substantial question relating to environment (including enforcement of any legal right relating to environment).
- Being a statutory adjudicatory body like Courts, apart from original jurisdiction side on filing of an application, NGT also has appellate jurisdiction to hear appeal as a Court (Tribunal).
- The Tribunal is not bound by the procedure laid down under the Code of Civil Procedure 1908, but shall be guided by principles of 'natural justice'.
- While passing any order/decision/ award, it shall apply the principles of sustainable development, the precautionary principle and the polluter pays principle.
- NGT by an order, can provide
  - relief and compensation to the victims of pollution and other environmental damage (including accident occurring while handling any hazardous substance),
  - for restitution of property damaged, and
  - for restitution of the environment for such area or areas, as the Tribunal may think fit.
- An order/decision/award of Tribunal is executable as a decree of a civil court.
- The NGT Act also provides a procedure for a penalty for noncompliance:
  - Imprisonment for a term which may extend to three years,
  - Fine which may extend to ten crore rupees, and
  - Both fine and imprisonment.
- An appeal against order/decision/ award of the NGT lies to the Supreme Court, generally within ninety days from the date of communication.
- The NGT deals with civil cases under the seven laws related to the environment, these include:
  - The Water (Prevention and Control of Pollution) Act, 1974,
  - The Water (Prevention and Control of Pollution) Cess Act, 1977,
  - The Forest (Conservation) Act, 1980,
  - The Air (Prevention and Control of Pollution) Act, 1981,
  - The Environment (Protection) Act, 1986,
  - The Public Liability Insurance Act, 1991 and
  - The Biological Diversity Act, 2002.

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- Any violation pertaining to these laws or any decision taken by the Government under these laws can be challenged before the NGT.

Strengths of NGT

- Over the years NGT has emerged as a critical player in environmental regulation, passing strict orders on issues ranging from pollution to deforestation to waste management.
- NGT offers a path for the evolution of environmental jurisprudence by setting up an alternative dispute resolution mechanism.
- It helps reduce the burden of litigation in the higher courts on environmental matters.
- NGT is less formal, less expensive, and a faster way of resolving environment related disputes.
- It plays a crucial role in curbing environment-damaging activities.
- The Chairperson and members are not eligible for reappointment; hence they are likely to deliver judgements independently, without succumbing to pressure from any quarter.
- The NGT has been instrumental in ensuring that the Environment Impact Assessment process is strictly observed.

Challenges

- Two important acts - Wildlife (Protection) Act, 1972 and Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 have been kept out of NGT's jurisdiction. This restricts the jurisdiction area of NGT and at times hampers its functioning as crucial forest rights issue is linked directly to environment.
- The NGT decisions are being challenged in various High Courts under Article 226 (power of High Courts to issue certain writs) with many asserting the superiority of a High Court over the NGT, claiming 'High Court is a constitutional body while NGT is a statutory body'." This is one of the weaknesses of the Act as there is lack of clarity about what kind of decisions can be challenged; even though according to the NGT Act, its decision can be challenged before the Supreme Court.
- Decisions of NGT have also been criticised and challenged due to their repercussions on economic growth and development.
- The absence of a formula-based mechanism in determining the compensation has also brought criticism to the tribunal.
- The decisions given by NGT are not fully complied by the stakeholders or the government. Sometimes its decisions are pointed out not to be feasible to implement within a given timeframe.
- The lack of human and financial resources has led to high pendency of cases - which undermines NGT's very objective of disposal of appeals within 6 months.
- The justice delivery mechanism is also hindered by limited number of regional benches.

Important Landmark Judgements of NGT

- In 2012, POSCO a steelmaker company signed a MoU with the Odisha government to set up steel project. NGT suspended order and this was considered a radical step in favour of the local communities and forests.
- In 2012 Almitra H. Patel vs. Union of India case, NGT gave judgment of complete prohibition on open burning of waste on lands, including landfills – regarded as the single biggest landmark case dealing with the issue of solid waste management in India.
- In 2013 in Uttarakhand floods case, the Alaknanda Hydro Power Co. Ltd. was ordered to compensate to the petitioner – here, the NGT directly relied on the principle of 'polluter pays.
- In 2015, the NGT ordered that all diesel vehicles over 10 years old will not be permitted to ply in Delhi-NCR.
- In 2017, the Art of Living Festival on Yamuna Food Plain was declared violating the environmental norms, the NGT panel imposed a penalty of Rs. 5 Crore.
- The NGT, in 2017, imposed an interim ban on plastic bags of less than 50-micron thickness in Delhi because "they were causing animal deaths, clogging sewers and harming the environment".

Conclusion: There is need for more autonomy and widen NGT's scope for effective protection of environment in balance with human developmental activities.

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(c) Green Bench

The Green benches are known as the benches which are formed by the Chief Justice of respective High Courts on directions from Chief Justice of Supreme Court either by their own or to make a bench exclusively (i.e. quorum which consists of Judges) for dealing with the matters related to the environment. It is generally a division bench of the Supreme Court in India.

On April 16,1996, a division bench of the Supreme Court (SC) comprising Justices Kuldip Singh and S Saghir Ahmed directed the chief justice of the Calcutta High Court to constitute a special division bench to hear environment-related petitions - and the nation's first green bench was born. The SC has directed this bench to meet once a week.

The constitution of the Calcutta bench was followed by another in Chennai. On September 2,1996, while passing an interim order in the Tamil Nadu tanneries case, a full bench of the SC comprising Justices Kuldip Singh, Falzan-uddin and K Venkataswami asked the chief justice of the Chennai High Court to constitute a special green bench to deal with environmenal matters - including the tanneries case - in that state

(d) Reserved Forests, Protected Forests and Village Forests

1. **Reserve forest:** These forests are the most restricted forests and may be constituted by the State Government on any forest land or waste land which is the property of the Government or on which the Government has proprietary rights. In reserved forests, most uses by local people are prohibited, unless specifically allowed by a Forest Officer in the course of settlement. About 53% of the total forest area falls in this category.

2. **Protected forest:** The State Government is empowered to constitute any land other than reserved forests as protected forests over which the Government has proprietary rights. Under 'Protected Forests', the Government retains the power to issue rules regarding the use of such forests and retains the power to reserve the specific tree species in the protected forests. This power has been used to establish State control over trees, whose timber, fruit or other non-wood products have revenue-raising potential. These forests occupy about 29% of the total forest area of the country.

3. **Village forest:** 'Village forests' are the one in which the State Government may assign to 'any village community the rights of Government to or over any land which has been constituted a reserved forest'. About 18% of the total forest area of the country falls under this category.

(e) Government Analyst

Section 13 of the Environment Protection Act, 1986 provides for the appointment of Government Analysts for the purpose of analysis of sample of air, water, soil or other substance sent for analysis to any environmental laboratory established or recognized under sub-section (1) of section 12.

(f) Ganga Pollution Case

The story of this court ruling began in 1985 in the pilgrimage city of Haridwar, along the Ganga; a matchstick tossed by a smoker resulted in the river catching on fire for more than 30 hours, due to the presence of a toxic layer of chemicals produced by a pharmaceutical firm (Mehta 2009). In response to this incident, environmental lawyer and social activist M.C. Mehta filed a writ petition in the SC charging that government authorities had not taken effective steps to prevent environmental pollution of the waters of the Ganga. The scale of the case - the whole 2,500-km stretch of the river - proved to be intractable. So, the Court requested Mr. Mehta to narrow down his focus and he chose the city of Kanpur, despite neither being from the city nor living there. In Mehta's words, "It (Kanpur) was in the middle of the Ganga basin; the reddish colour of the pollution made the pollution highly salient, and the city seemed representative of many other cities in the Ganga Basin." (Mehta 2014)

For more than 100 years, Kanpur has been a major centre for India's tannery industry. Most of the tanneries are located in the neighborhood of Jajmau, which lies outside the main city on the southern bank of the Ganga. The leather industry is highly polluting; the processes of washing, liming, fleshing, tanning, splitting and finishing involve a large number of chemicals. One ton of hide generally leads to the production of 20-80 cubic meter of turbid and foul-smelling wastewater, including chromium levels of 100–400 mg/l, sulfide levels of 200–800 mg/l, high levels of fat and other solid wastes, as well as significant pathogen contamination. Pesticides are also often added for hide conservation during transport (Cheremisinoff 2001). Tannery effluent is generally characterised by its strong colour (reddish or dull brown), high levels of biochemical oxygen demand (BOD), high pH, and large amounts of dissolved solid wastes.

The 8-10 respondents in Mr. Mehta's petition included all 75 tanneries of the Jajmau district the Union of India, the Chair of the Central Pollution Control Board (CPCB), the Chair of the Uttar Pradesh State Pollution Control Board (SPCB), and the Indian Standards Institute. The petition also claimed that the Municipal Corporation of Kanpur was not fulfilling its responsibilities. The Court subsequently bifurcated the petition into two parts. The first dealt with the tanneries of Kanpur and the second with the Municipal Corporation. These are now called Mehta I and Mehta II in legislative digests, and became the "Ganga Pollution Cases" - the most significant water pollution litigation in the Indian court system.

By October 1987, the SC had invoked the Water Act and Environment (Protection) Act, as well as Article 21 of the Indian Constitution (which protects an individual's right to life), to rule in Mr. Mehta's favour. It ordered the tanneries of Jajmau to clean their wastewater within six months or shut down entirely. This was followed by a January 1988 judgment that required Kanpur's local municipality to take several immediate measures to control water pollution: relocation of 80,000 cattle housed in dairies or safe removal of animal waste from these locations; cleaning of the city's sewers; building of larger sewer systems; construction of public latrines; and an immediate ban on the disposal of corpses into the river. The court order also required all schools to devote one hour each week to environmental education and awareness.

(g) Precautionary Principle.

Precautionary principle plays a significant role in determining whether developmental process is sustainable or not. Precautionary principle underlies sustainable development which requires that the developmental activity must be stopped and prevented if it causes serious and irreversible environmental damage. The emergence of precautionary principle marks a shift in the international environmental jurisprudence- a shift from assimilative capacity principle to precautionary principle.

The essential ingredients of the precautionary principle are:
(i) Environmental measures- by the State Government and the statutory authorities-must anticipate, prevent and attack the causes of environmental degradation.
(ii) When there are threats of serious and irreversible damages, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign ("Reversal of burden of proof).
(iv) Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (justified) concern or risk potential.

The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing he activity that is potentially harmful to the environment.

Case laws

In ***Vellore Citizens Welfare Forum v. Union of India (Tamil Nadu Tanneries Case)***, about 900 tanneries in five districts of the State of Tamil Nadu were discharging enormous amount of untreated effluent consisting of about 170 different types of chemicals into agricultural fields, roadside, waterways and open land. About 35,000 hectares of land became partially or totally unfit for cultivation. The water in the area became unfit for consumption and irrigation purposes.

In his judgment, Justice Kuldip Singh (known to be a Green Judge) observed that, even otherwise once these principles are accepted as part of the Customary International Law, there would be no difficulty in accepting them as part of the domestic law. It is almost accepted proposition of municipal law, that the rule of customary international law, which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall also be followed by the Courts of laws of the country. One of the significant directions given by the Supreme Court in this litigation was contained in an order passed in 1995 whereby some of the industries were required to set up effluent treatment plants.

In ***Narmada Bachao Andolan v. Union of India***, precautionary principle came to be considered by the majority of judges. The Court also took the view that the doctrine is to be employed only in cases of pollution when its impact is uncertain and non-negligible.

In ***M.C. Mehta v. Union of India***, the Supreme Court once again followed the path of sustainable development and directed that the industries operating in Taj Trapezium Zone using a coke/coalas industrial fuel must stop functioning and they could relocate to the alternate site provided under the Agra Master Plan. It further stated that not even 1% chance could be taken when human life a part, the preservation of a prestigious monument like the Taj was involved.

In ***Shobha Rama Subramanayyam v. The Member Secretary, Chennai Metropolitan Authority***, The Court stated that the construction builders have a duty to use modes for digging foundation for multistory buildings, so that it does not cause noise pollution in the neighboring areas.

In ***S. Jagannath v. Union of India***, the Supreme Court held that sea beaches and sea coasts are gifts of nature and any activity polluting the same cannot be permitted. The intensified shrimp(prawn) farming culture industry by modern method in coastal areas was causing degradation of mangrove ecosystem, depletion of plantation discharge of highly polluting effluents and pollution of potable as well as ground water. The Precautionary Principle led to the evolution of the special principle of burden of proof mentioned in Vellore Citizens Welfare Forum.

(h) Climate Change

We feel hot during summer and cold during winter. These are the different climatic conditions that we experience. The climate of a place is the average weather that it experiences over a period of time. The factors that determine the climate at a location are the rainfall, sunshine, wind, humidity, and temperature.

While changes in the weather may occur suddenly and noticeably, changes in the climate take a long time and are therefore less obvious. There have been changes in the earth's climate and all life forms adapted naturally to this change.

However, the last 150 - 200 years climate change has been taking place too rapidly and certain plant and animal species have found it hard to adapt. Human activities are said to be responsible for the speed at which this change has occurred.

Causes of climate change: The causes of climate change can be divided into two categories - Natural and man-made.

Natural causes: There are a number of natural factors responsible for climate change. Some of the important factors are continental drift, volcanoes, ocean currents and the earth's tilt.

- Continental drift: The continents we see today were formed when the landmass began gradually drifting apart, millions of years back. This drift changed the position of water bodies of the landmass and the flow of ocean currents and winds. These changes affect the climate. This drift of the continents continues even today.
- Volcanoes: When a volcano erupts it throws out large volumes of sulphur dioxide (SO_2), water vapour, dust, and ash into the atmosphere. Although the volcanic activity may last only a few days, yet the large volumes of gases and ash can influence climatic patterns for years. The gases and dust particles partially block the incoming rays of the sun, leading to cooling.
- The earth's tilt: The earth is tilted at an angle of 23.5° to the perpendicular plane of its orbital path. Changes in the tilt of the earth affect the severity of the seasons. More tilt means warmer summers and colder winters; less tilt means cooler summers and milder winters.
- Ocean currents: The oceans are a major component of the climate system. They cover about 71% of the Earth. The oceans absorb the sun's radiation about twice as much as the atmosphere

Human causes

Greenhouse effect: The earth receives energy from the sun, which warms the earth's surface. As this energy passes through the atmosphere, a certain percentage (about 30) gets scattered. Some part of this energy is reflected back into the atmosphere from the land and ocean surface. Certain gases in the atmosphere form a sort of blanket around the earth and absorb some of this energy. These gases like carbon dioxide, methane, and nitrous oxide, along with water vapour, comprise less than one per cent of the atmosphere. They are called 'greenhouse gases'. Just as the glass of the greenhouse prevents the radiation of excess energy, this 'gas blanket' absorbs some of the energy emitted by the earth and maintains keeps temperature levels. Hence it is named 'greenhouse effect'.

The greenhouse effect was first recognized by a French scientist, Jean-Baptiste Fourier. He pointed out the similarity in what happens in the atmosphere and in a greenhouse. The blanket of greenhouse gases has been in place ever since the creation of the earth. However, as a result of increased human activities, more and more of these greenhouse gases are released into the atmosphere. This leads to the blanket becoming thicker and upsets the 'natural greenhouse effect'.

Carbon dioxide is released when we burn such fuels as coal, oil, and natural gas. And, when we destroy forests, the carbon stored in the trees escapes as carbon dioxide into the atmosphere. Increasing agricultural activities, changes in land-use patterns, and other sources lead to rising levels of methane and nitrous oxide. Industrial processes also release artificial and new greenhouse gases like CFCs (chlorofluorocarbons), while automobile exhaust fumes lead to ozone generation. The resulting enhanced greenhouse effect is more commonly referred to as global warming or climate change.

How do we contribute to the greenhouse gases?

- Use of fossil fuels like coal, petrol, etc.
- Cutting down trees to meet our demand for more land
- Generation of non-degradable waste material - plastics
- Indiscriminate use of fertilizers, pesticides in agriculture

How will climate change affect us?

Climate change is a threat to mankind. The earth's average surface temperature has increased by 0.3-0.6 ^{o}C since the end of the 19th century. Such increase in temperature may seem to be minimal to us but they can lead to a disaster as highlighted below.

Agriculture: The increasing population has resulted in increased demand for food. This results in pressure on natural resources. Climate change will affect agricultural yield directly because of alterations in temperature and rainfall, and indirectly through changes in soil quality, pests, and diseases. It is said that the yield of cereals is expected to decline in India. Extreme weather conditions such as high temperature, heavy rainfall, floods, droughts, etc. will also affect crop production.

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Weather: A warmer climate will change rainfall patterns, lead to increased droughts and floods, cause melting of glaciers and polar ice sheets, and result in increased sea- level rise. An increase in the number of cyclones and hurricanes over the last few years has been attributed to changes in temperature.

Sea level rise: One of the outcomes of climate change is the rising sea level. The heating of oceans, and melting of glaciers and polar ice sheets, is predicted to raise the average sea level by about half a meter over the next century. Sea-level rise could have a number of physical impacts on coastal areas, including loss of land due to inundation and erosion, increased flooding, and salt-water intrusion. These could adversely affect coastal agriculture, drinking water resources, fisheries, human settlements, and health.

Health: Global warming will directly affect human health by increasing cases of heat-related mortality, dehydration, spread of infectious diseases, malnutrition, and damage to public health infrastructure.

Forests and wildlife: Plants and animals in the natural environment are very sensitive to changes in climate. If the rate of climate change continues to increase, extinction of various species of plants and animals could happen.

Preventive measures

- Reduction in the use of non-renewable sources of energy (fossil fuels)
- Increased use of renewable sources like solar, wind energy etc.
- Save trees and grow more trees
- Avoid indiscriminate use of non-degradable materials like plastics

(i) Protected Area

Protected areas or **conservation areas** are locations which receive protection because of their recognized natural, ecological or cultural values. There are several kinds of protected areas, which vary by level of protection depending on the enabling laws of each country or the regulations of the international organizations involved.

The term "protected area" also includes Marine Protected Areas, the boundaries of which will include some area of ocean, and Transboundary Protected Areas that overlap multiple countries which remove the borders inside the area for conservation and economic purposes. There are over 161,000 protected areas in the world (as of October 2010) with more added daily, representing between 10 and 15 percent of the world's land surface area. By contrast, only 1.17% of the world's oceans is included in the world's ~6,800 Marine Protected Areas.

Protected areas are essential for biodiversity conservation, often providing habitat and protection from hunting for threatened and endangered species. Protection helps maintain ecological processes that cannot survive in most intensely managed landscapes and seascapes.